1 IN THE CHANCERY COURT OF
2 JACKSON COUNTY, MISSISSIPPI
3 CAUSE NO. 94-1429
4
5 IN RE: MIKE MOORE, ATTORNEY
6 GENERAL EX REL, STATE OF
7 MISSISSIPPI TOBACCO LITIGATION
8
9
10 DEPOSITION OF: PARHAM H. WILLIAMS, JR.
11
12 DATE: Tuesday, April 1, 1997
13
14 TIME: 9:00 a.m.
15
16 LOCATION: Financial Center
17 505 20th Street N.
18 Birmingham, AL 35203
19
20 TAKEN BY: Counsel for the
21 State of Mississippi
22
23 REPORTED BY: TONYA BYNUM

1 STIPULATIONS
2 IT IS STIPULATED AND AGREED by
3 and between the parties through their
4 respective counsel that the deposition of
5 Parham H. Williams, Jr., a witness in the

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6 above-entitled cause may be taken before
7 Tonya Bynum, a Shorthand Reporter and Notary
8 Public in and for Jefferson County, Alabama,
9 at Birmingham, Alabama, on the 1 day of
10 April, 1997, commencing at 9:00 a.m.,
11 pursuant to the Mississippi Rules of Civil
12 Procedure.
13
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23

1 A P P E A R A N C E S
2
3 For The Plaintiff:
4 Susan Nial
5 NESS, MOTLEY, LOADHOLT,
6 RICHARDSON & POOLE
7 151 Meeting Street, Suite 600
8 Charleston, SC 29402
9
10 Cindi Anne Solomon

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12 RICHARDSON & POOLE

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14 Charleston, SC 29402

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16 For The Defendant:

17 J. William Newbold

18 THOMPSON COBURN

19 #1 Mercantile Center

20 St. Louis, MO 63101

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23

1 Billy R. Randles

2 SHOOK, HARDY & BACON, L.L.P.

3 One Kansas City Place

4 1200 Main Street

5 Kansas City, MO 64105

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7 Deirdre Fox

8 KIRKLAND & ELLIS

9 200 E. Randolph

10 Chicago, IL 60611

11

12 For the Distributors:

13

14 E. Brooke Ferris III

15 GIBBES, GRAVES, MULLINS, FERRIS,

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16 HORTMAN & HARLOW

17 414 West Oak Street

18 Laurel, MS 39441

19

20 Also Present:

21 Sandra Burley, Paralegal

22 Ness, Motley, Loadholt,

23 Richardson & Poole

1 Reported by:

2 Tonya Bynum

3 EDMONDSON REPORTING & VIDEO

4 1030 Financial Center

5 Birmingham, AL 35203

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DEPOSITION OF: PARHAM H. WILLIAMS, JR.

I, Tonya Bynum, a Shorthand Reporter of the State of Alabama, acting as commissioner, certify that there came before me at 505 North 20th Street, Birmingham, Alabama, on April 1, 1997, beginning at 9:00 a.m., Parham H. Williams, Jr., witness in the above cause, for oral examination, whereupon the following proceedings were

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had:

PARHAM H. WILLIAMS, JR.

was duly sworn

and testified as follows:

MR. NEWBOLD: May the record show that my name is Bill Newbold, and I represent one of the defendants, Lorillard Corporation, along with Billy Randles. Bill also represents Lorillard Corporation in this deposition.

I would like to say for the record that this deposition shall be governed by paragraph 13 of the order governing access

to and use of material determined to be privileged and/or confidential.

That means that the entire transcript and exhibits will remain confidential for a period of 14 days after the date the deposition transcript is received.

Within those 14 days, we will designate the specific exhibits and/or pages and lines of the transcript that we believe to be confidential material and notify the parties.

May the record also show that in the list of materials reviewed by Dean Williams, I inadvertently omitted listing

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the book known as "The Cigarette Papers," which he has reviewed. I have nothing further for the record at this time.

MS. NIAL: (To the court reporter) Susan Nial for Ness, Motley representing the State of Mississippi.

MS. SOLOMON: Cindi Solomon with Ness, Motley also representing the State of

Mississippi.

MR. FERRIS: Brooke Ferris representing the distributors defendants.

MS. FOX: Deirdre Fox from Kirkland and Ellis representing Brown and Williamson Tobacco Corporation.

MR. RANDLES: Billy Randles from Shook, Hardy & Bacon representing Lorillard.

MR. NEWBOLD: And Bill Newbold of Thompson Coburn representing Lorillard.

EXAMINATION BY MS. NIAL:

Q. Mr. Williams, I wonder if you could state your full name for the record?

A. Yes. My name is Parham H. Williams, Jr.

Q. Thank you. I've just given my appearance. As you know, my name is Susan Nial. I represent the State of Mississippi. And this deposition is being taken pursuant to notice, which if there is

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no objection, I will have identified as Exhibit 1.

MR. NEWBOLD: No objection. Other than I will note for the record that I wrote a letter to counsel for the State of Mississippi advising them that we had provided two days for Mr. Williams' deposition, they being Monday the 31st and today, April the 1st.

I take exception to that portion of the notice which says, quote, for the second date to be notified at a later date, close quote. We feel that we have offered the witness for two days and that the plaintiffs have elected to take only one day.

MS. NIAL: And of course in response, statement on the record from the State, as we have advised defense counsel, we believe that the documents were not produced in a timely fashion.

And while we understand that the defense counsel objects to that representation, we reserve our right to ask for a redeposition the second day of this deposition. So this is the first day, in

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our opinion, of this deposition

(Plaintiff's Exhibit No. 1 was marked for identification. A copy is attached.)

Q. (By Ms. Nial) Mr. Williams, I understand that you are a lawyer. However, I'd like to go over a couple of ground rules so that you and I are both communicating on the same level in this deposition.

First of all, I will try to be as clear as I possibly can in my questions to you. And I will try to speak as loudly and as carefully as I can so that you can understand my diction.

If you do not understand the question; that is, the substance of the question, please let me know. If you can't hear me, ask me to speak up. If you need a break, let me know.

If there's no question pending, I'll be happy to give you a break. I don't want to make you uncomfortable or cause you any stress. If there's any physical reason

you need to get up and walk around the room, please feel free to do so.

A. Thank you.

Q. As the stenographer needs to have one of us speaking at a time, I will try not

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6 to interrupt your answers if you'll try not
7 to interrupt my questions. You understand
8 that this deposition may, in fact, be used
9 at trial?
10 A. Yes.
11 Q. Are you represented today by
12 personal counsel?
13 A. I'm here with Mr. Bill Newbold, but
14 not with personal counsel other than that.
15 Q. And Mr. Newbold represents the
16 defendant, Lorillard; is that correct?
17 A. Yes, that is correct.
18 Q. Where do you presently work?
19 A. I am on the faculty of the
20 Cumberland School of Law of Samford
21 University here in Birmingham.
22 Q. And when you say you are on the
23 faculty, what is your position?

1 A. Professor of law.
2 Q. Are you also dean?
3 A. I was dean until last June the 1st.
4 And then reverted to full-time teaching.
5 Q. Now, why did you leave your
6 position as dean on June 1st?
7 A. I had completed a total of 25 years
8 as a law school dean, and this was a very
9 good time to do what I had wanted to do for
10 the past couple of years. And that is to go

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11 back to full-time teaching in the classroom.

12 Q. And have you always been, during

13 the 25 years, Dean of the Cumberland Law

14 School?

15 A. No. I was Dean of Cumberland for

16 11 years. And then prior to that, was Dean

17 of the University of Mississippi Law School

18 for 14 years.

19 Q. And why did you leave the

20 Mississippi Law School to come to --

21 A. That's an interesting story. Over

22 time and one has been a dean for some 14

23 years, various interest groups, political in

1 nature, develop on the faculty.

2 And there were differing ideas

3 about the course of that Law School and what

4 it should be and particularly about its

5 relationship to the profession in

6 Mississippi. I had very strong views on

7 that. Interest groups in the faculty had

8 other views.

9 So as a consequence, under the

10 policy of the University, which requires a

11 review by the faculty of a department or

12 school every four years of the person who is

13 chair or dean of that department or school,

14 the majority of that faculty decided that

15 they would rather follow their policy

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16 instead of mine.

17 Q. Could you tell me what your policy

18 was?

19 A. I felt very strongly that the Law

20 School should relate closely to the bar. I

21 think that part of the function of a law

22 school, in addition to educating young men

23 and women to be lawyers, is to continue that

1 education and continue a service function

2 with the people who are in practice in the

3 state.

4 And that includes not only

5 practitioners, but also the judiciary. So I

6 felt very strongly that the Law School

7 should enhance those relationships and focus

8 more closely on teaching the law of

9 Mississippi and in providing service --

10 continuing legal education -- other kinds of

11 service to the bar. And there was a

12 difference of opinion on the faculty about

13 that.

14 Q. Did you say they were reviews or --

15 A. Yes. As I recall the University of

16 Mississippi policy, it provided for a review

17 once every four years by the person who was

18 chair of a department or dean of a school.

19 And this was a review which took,

20 really, the nature of interviews by the

21 University Vice Chancellor for Academic

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22 Affairs -- in some universities he called a
23 provost -- with individual faculty members.

1 And as a consequence of those
2 interviews, then the provost, I suppose, I
3 really am not privy to the process at that
4 point, tallies up the pros and cons and then
5 makes a decision.
6 Q. Were you advised by letter that
7 your, if I might use the word, relationship
8 as dean with the Law School was terminated?
9 A. Yes, I was.
10 Q. And what did the letter say, if you
11 recall?
12 A. I don't recall specifically now.
13 But basically to the effect that as a result
14 of this policy review, the decision was that
15 my -- I would not be reappointed as dean for
16 another four years. Basically, that's what
17 it said.
18 Q. And it was a purely policy-oriented
19 dispute that resulted in your termination?
20 A. I'm sure there were personal issues
21 involved too. When you are dean of a school
22 and control such things as faculty salaries,
23 faculty research grants, there develop

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issues on a personal basis over time. I'm sure there were those too.

Q. Were there any concerns expressed by either the provost or any of the other persons involved in that situation regarding your academic abilities?

A. No.

Q. What is your current business address?

A. Incidentally, let me add that I did have tenure there and could have remained on that faculty as a full-time teacher. Now my current business address is the Cumberland School of Law, Samford University, 800 Lakeshore Drive, Birmingham, Alabama, 35229.

Q. Now, when you left the position of Dean at Cumberland, did you leave because you decided to, quotes, retire from being a dean?

A. Yes. That was a decision. But it coincided also with University policy at Samford, which was that persons who reached the age of 65 may not continue in an

administrative position.

So, let's see. My 65th birthday was June the 8th, 1996. So the termination of that spring semester, May 31st being the end of the fiscal year for that University, I coincided very nicely with the University

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7 policy. It was a very convenient time for
8 me.
9 Q. As a full-time law professor at the
10 Cumberland University, what classes do you
11 teach?
12 A. I'm currently teaching a section of
13 evidence and criminal procedure. We call it
14 Criminal Procedure 1, which is the
15 investigative stage.
16 Q. And what level are the students
17 that you teach?
18 A. The evidence students are second
19 semester, first year students. And the
20 criminal pro students are largely third
21 year.
22 Q. Are you involved in any clinical
23 programs at the University?

1 A. Not currently, no.
2 Q. Are you involved in any one-on-one
3 teaching relationships with any of your
4 students?
5 A. Not this semester. But typically,
6 one does have students who take what is
7 called directed research for one hour of
8 credit. And they do work with the professor
9 one-on-one, and they prepare a paper. But I
10 do not have any students this semester.
11 Q. Have you done that in the past?

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12 A. I have done that in the past.

13 Q. And what kind of areas of law have

14 you done with your students in the directed

15 research program?

16 A. It almost always has been an area

17 of evidence law. One area of interest has

18 been hearsay and various aspects of that.

19 Q. Do you currently teach any classes

20 in ethics?

21 A. I do not.

22 Q. Have you ever taught any classes in

23 ethics?

1 A. I have never taught a formal class

2 in ethics. But of course, ethics permeates

3 much of the substantive content of the

4 courses that I teach.

5 Q. Have you ever written any articles

6 on ethics?

7 A. I have not.

8 Q. Any articles on evidence?

9 A. I have.

10 Q. Have those articles appeared in

11 what could be called for lawyers pure review

12 journals?

13 A. Pure review in a sense that law

14 reviews are typically student edited. So I

15 guess if you speak of faculty pure review,

16 the answer would be no. But I have had

17 publications in student-edited law reviews.

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18 Q. What is your home phone number?

19 A. DELETED.

20 Q. And your office?

21 A. 205-870-2158.

22 Q. And your social security number?

23 A. DELETED.

1 Q. And your date of birth?

2 A. June 8, 1931.

3 Q. Are your married, sir?

4 A. I am.

5 Q. And your wife's name?

6 A. Polly Franklin Williams.

7 Q. How long have you been married,

8 sir?

9 A. Since September 5, 1954, which will

10 be 42 plus years.

11 Q. Congratulations.

12 A. Thank you.

13 Q. Do you have any children?

14 A. I do.

15 Q. How many children do you have?

16 A. I have four.

17 Q. Do they range in age? What is

18 their range in age?

19 A. The oldest is a daughter who is

20 39. And the next is a son -- excuse me. I

21 believe she's currently 38. The next is a

22 son who's 36. Then a son who is 34. And a

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23 son who is 30.

1 Q. And do your children have any
2 grandchildren?
3 A. They do. Well, they have children,
4 and I have grandchildren.
5 Q. I assume that they're all married.
6 A. The four children are, yes.
7 Q. How old are your grandchildren?
8 A. They range in age from 11 to 11
9 months.
10 Q. And how many grandchildren do you
11 have?
12 A. Six.
13 Q. Do they all live in the Birmingham
14 area?
15 A. No. One son and his wife live
16 [DELETED]. One son, his wife, and three children
17 live in [DELETED]. The daughter,
18 her husband, and two children live in
19 [DELETED]. And a son, his wife,
20 and child live in [DELETED].
21 Q. Professor Williams, are you taking
22 any medication today that might impair
23 your --

1 A. No, I have not.
2 Q. Don't take these questions the

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3 wrong way, but have you ever been arrested
4 or convicted of a crime?
5 A. No.
6 Q. Have you ever been subject to an
7 investigation by any bar or grievance
8 committee?
9 A. No. Other than whatever took place
10 when I was originally admitted to the bar.
11 But I doubt that anything took place at that
12 point.
13 Q. And to your knowledge, there is no
14 grievance pending against you before any --
15 A. No. To my knowledge, there is none.
16 Q. I'm going to talk to you a little
17 bit about your preparation for the
18 deposition today. Did you have any meetings
19 with counsel in preparation for today's
20 deposition?
21 A. Yes, I did.
22 Q. I wonder if you could you tell me
23 about them, please?

1 A. The first meeting with counsel took
2 place on January the 8th of this year. And
3 persons present included Brooke Ferris, Bill
4 Newbold, and Bob McDermott.
5 Q. And at that meeting, what issues
6 were discussed?
7 A. Principally, Mr. McDermott gave a

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8 background of tobacco company litigation
9 over time.
10 Q. Did he talk to you about the
11 substance of your testimony here today?
12 A. Not except that he said that they
13 were -- they were looking for expert
14 testimony concerning the ethical
15 considerations relating to lawyer
16 representation of the tobacco companies.
17 But at that point, I had not told
18 them that I would be a witness. So it was
19 pretty general.
20 Q. Was this just a meet-and-greet type
21 meeting?
22 A. Largely so. But also informational.
23 Q. At that point, you had not been

1 retained?
2 A. That's correct.
3 Q. Did you receive any documents at
4 your January 8th meeting?
5 A. I did not.
6 Q. When Mr. McDermott gave you a
7 background or a summary of the tobacco
8 litigation, what types of issues did he
9 discuss with you?
10 A. To the best of my recollection, he
11 talked about the role of lawyers in
12 representing an industry which is confronted
13 with a source of continuing litigation and

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14 regulatory control as a tobacco industry.

15 Q. Did he ask you at that point in

16 time what your views were on representation?

17 A. I don't recall a specific -- my

18 views on what?

19 Q. On the representation of the

20 tobacco industry by lawyers?

21 A. I don't recall a specific question

22 to that effect.

23 Q. Before you attended the 1/8 meeting

1 with Brooke Ferris and Billy Randles and Bob

2 McDermott, had you --

3 A. Billy Randles was not there.

4 Q. Oh, Billy Randles was not there.

5 Oh, Bill Newbold. Sorry. With Mr. Newbold,

6 had you read any of the public press

7 articles regarding, for example, the Brown

8 and Williamson documents?

9 A. I think over time, yes, I have read

10 a number of articles that appeared in

11 newspapers.

12 Q. Did any of those articles cause you

13 any concern regarding the representation

14 that had been provided to the tobacco

15 industry by tobacco industry lawyers?

16 MR. NEWBOLD: I object to the form

17 of the question.

18 Q. (By Ms. Nial) You may answer.

19 A. I don't recall having any

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20 particular concern raised by reading those

21 articles.

22 Q. Do you recall which articles you

23 may have read?

1 A. I do not at this point.

2 Q. Before your meeting with Brooke

3 Ferris, Mr. Newbold, and Mr. McDermott, had

4 you read the JAMA articles?

5 A. No, I had not.

6 Q. At the time of your meeting in

7 January on January 8th, did you request any

8 documents at the end of your meeting?

9 A. I did not request any documents

10 that I recall. I was -- no. I did not

11 request any.

12 Q. At the end of your January 8th

13 meeting, did you agree to testify?

14 A. I did not.

15 Q. When did you decide that you would

16 testify?

17 A. Probably four or five days later

18 after thinking about it.

19 Q. And how did you communicate your

20 decision to testify?

21 A. Mr. Ferris called me by telephone.

22 Q. Was it Mr. Ferris who initially

23 contacted you to set up the meeting?

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A. It was.

Q. Did Mr. Ferris tell you why he thought you would be a good choice as an expert in this litigation?

A. I don't recall specifically the conversation. But it was to the effect that he felt like that I would have the expertise and knowledge that could be helpful to them.

Q. Had you known Mr. Ferris before he gave you that phone call?

A. Yes.

Q. In what capacity did you know him?

A. I once had the privilege of teaching Mr. Ferris in law school.

Q. Was he a good student?

A. Oh, he was the best.

Q. Any other relationship with Mr. Ferris?

A. I've known him over time since he graduated from law school, and I've worked with him in various law school alumni functions and things of that sort.

Q. Had you been an expert for

Mr. Ferris in other litigation?

A. Not for Mister -- no.

Q. Had you been an expert for any of the lawyers that you met with on January 8th

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in other litigation?

A. No.

Q. Have you been an expert in other litigation?

A. I have.

Q. Could you tell me in each individual case, first, the name of the case, if you would, and the issues on which you were an expert?

A. All right. The case is this case -- the Mississippi case against the tobacco companies. And I was contacted probably in November of 1994 by George Hewes, who is an attorney in the Brunini firm in Jackson.

And he asked to meet with me. We did meet, and there was some conversation about my being an expert witness. At that time, they were thinking of an affidavit. I

did not, at that time, prepare an affidavit or render any other service.

Q. Now when Mr. Hewes contacted you, did he contact you in reference to the Mike Moore case or --

A. Yes.

Q. Did Mr. Hewes also discuss with you the possibility of testifying in the Butler case?

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10 A. No.

11 Q. Has Mr. Ferris discussed with you

12 the possibility of testifying in the Butler

13 case?

14 A. No.

15 Q. When Mr. Hewes contacted you in

16 1994, did he tell you why he thought you

17 would be a good witness or good expert

18 witness in the tobacco litigation?

19 A. He told me that he thought that I

20 had the respect of the bar and the

21 judiciary. And that I had the knowledge

22 necessary to be helpful on issues relating

23 to lawyer involvement. And for that reason,

1 he felt like I would be a suitable witness.

2 Q. Did you know Mr. Hewes before he

3 contacted you?

4 A. Yes.

5 Q. How did you know Mr. Hewes?

6 A. I knew Mr. Hewes when we were law

7 students together and have know him ever

8 since.

9 Q. Didn't teach Mr. Hewes?

10 A. No.

11 Q. Did I hear you correctly that you

12 did not do an affidavit at that time?

13 A. That is correct.

14 Q. Have you since done any affidavits

15 in tobacco litigation?

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16 A. I have.

17 Q. You have. And for what case?

18 A. Same case. Mississippi Attorney

19 General's case.

20 Q. I haven't seen such an affidavit.

21 So I wonder -- are you sure that it was an

22 affidavit that you drafted?

23 A. I am.

1 MS. NIAL: I wonder if we might have

2 a copy of that affidavit, Mr. Newbold. I

3 did not see it in the box. It was not

4 produced. And I have only seen the 26 (b)

5 statement. Take that request under

6 advisement, if you like.

7 MR. NEWBOLD: I shall.

8 Q. (By Ms. Nial) Can you tell me when

9 you drafted that affidavit?

10 A. Yes. It was done in January and

11 February of 1996.

12 Q. Were you told the purpose of the

13 affidavit?

14 A. The subject matter of it related to

15 the propriety of defense lawyer contacts

16 with state government employees.

17 Q. What was the substance of the

18 opinion that you provided in that affidavit?

19 A. That such contacts were clearly

20 authorized with state employees such as the

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director of the medicaid division, professors at the school of law, other state employees, with the exception of the

Attorney General and his immediate staff.

Q. And you drafted that affidavit in support of the defense -- the tobacco industry's belief that they had the right to contact state employees?

A. That is correct.

Q. And the Attorney General's position was that no such right existed; is that correct?

A. That's my understanding.

Q. And was the Attorney General's argument that those persons were, in fact, part of his client and their --

A. That is my understanding.

Q. Do you know whether or not that affidavit was actually filed with the court?

A. I do not.

Q. As a general rule -- not discussing the facts for which you drafted your affidavit, as a general rule, do you believe that counsel for a defendant should not contact employees of a opposing party without the presence of their lawyer?

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MR. NEWBOLD: I'm going to object to this question. I understand the Mississippi rules as it pertains to the cross-examination of an expert witness is to be fairly wide open and indeed wide open if it's relevant and can lead to discoverable evidence.

But this really seems to be far afield of why Dean Williams has been designated as an expert witness in this case. And I object.

MS. NIAL: Are you directing the witness not to answer?

MR. NEWBOLD: No. I'm not directing -- I don't think I have the right to direct him not to answer under the case management. I represent it doesn't go to privilege or proprietary information or trade secrets. But it does strike me as being rather proactive, and I object.

Q. (By Ms. Nial) I wonder if you could answer the question?

A. Would you repeat the question?

Q. Sure. Do you believe that as a general rule counsel for an opposing party should not contact the employees of an opposing party without contacting the lawyers of that opposing party?

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A. Well, The Code of Professional Responsibility, I believe it's Section 4.2, prohibits that, unless authorized by law.

And there is substantial case law to the effect that where a private party is in litigation with a government that the private party has lawful authorization to contact employees of the government -- in this case, the state government -- to discuss matters relating to the litigation.

Q. Would it make any difference to your opinion regarding the propriety of that contact if the lawyers for the private party do not inform the employers of the State that they are, in fact, lawyers for opposing party?

A. I think as a matter of courtesy, they should inform the principal lawyer for

the governmental agency. I'm not sure that it is an impropriety if they do not.

Q. I think we had finished discussing, I believe, your November 1994 discussion with George Hewes. Did you meet with Mr. Hewes after that telephone conversation?

A. Yes, we did. I met with him. And in fact, we had a full-day meeting.

Q. And do you recall when that was?

A. I don't recall the date. But it was in late November of '94.

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12 Q. Do you recall what issues you
13 discussed with Mr. Hewes during that
14 full-day meeting?
15 A. We reviewed -- once again, he gave
16 me background information about the
17 litigation -- about the history of the
18 tobacco industries litigation and regulatory
19 controls.
20 And asked, as I recall, from my
21 knowledge or information about experts who
22 had special knowledge about legal ethics.
23 And as I recall, I gave him a

1 recommendation.
2 Q. Who did you recommend?
3 A. I recommended Tom Morgan, who used
4 to be Dean of the Emory Law School. And as
5 I understand, is now on the faculty, I
6 believe, of George Washington University.
7 But I'm not certain of that.
8 Q. Do you know whether or not
9 Mr. Hewes ever contacted Mr. Morgan?
10 A. I do not.
11 Q. Besides giving a recommendation to
12 Mr. Hewes for an ethics expert, what other
13 recommendations or information did you give
14 to Mr. Hewes at that time?
15 A. I think that was it.
16 Q. Was that the day on which you
17 discussed the affidavit that you later

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18 drafted?

19 A. No.

20 Q. Besides the telephone call in early

21 November, when did you discuss that

22 affidavit again?

23 A. Well, I didn't discuss it again.

1 It was raised for the first time in a

2 telephone call from Mr. Hewes in January of

3 '96.

4 Q. And who drafted the affidavit?

5 A. I did.

6 Q. Did you draft it on your own?

7 A. If you mean did I personally draft,

8 research, and type, the answer to all of

9 that is yes.

10 Q. Did Mr. Hewes review the affidavit

11 and make changes?

12 A. He did.

13 Q. Did he make changes?

14 A. I don't recall if he -- there were

15 several drafts. And each draft was subject

16 to review and suggestions, yes.

17 Q. And besides Mr. Hewes, did anyone

18 else review your affidavit?

19 A. Yes. That person was Barbara

20 McDowell in the Jones, Day office in

21 Washington.

22 Q. Do you know who Ms. McDowell was

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23 representing at the time?

1 A. I don't recall.

2 Q. Did Ms. McDowell make any

3 recommendations of changes in your

4 affidavit?

5 A. As I recall, she reviewed it and

6 made some suggestions, some of which I

7 agreed with and incorporated. Some of which

8 I did not.

9 Q. Besides Mr. Hewes and Ms. McDowell,

10 did anyone else review your affidavit?

11 A. Not to my knowledge.

12 Q. And when did you complete this

13 affidavit?

14 A. My recollection is it was in late

15 February of 1996.

16 Q. And did you forward the completed

17 affidavit to Mr. Hewes?

18 A. I believe I sent the affidavit

19 to -- I think I sent it to Joe Colingo in

20 Pascagoula with a copy to Hewes and

21 to McDowell.

22 Q. And who does Mr. Colingo

23 represent? Do you know?

1 A. He was associated with him. I do

2 not know which client specifically.

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3 Q. Did you read -- first of all, do
4 you know if there was a brief or memorandum
5 that was going to go along with your
6 affidavit?
7 A. Yes, there was. Well, I take that
8 back. I know that there was a brief of the
9 law which had been prepared. Whether it
10 accompanied my affidavit, I do not know.
11 Q. Do you recall whether or not you
12 reviewed that brief?
13 A. I reviewed a memorandum which was
14 provided to me by Mr. Hewes, as I recall.
15 Q. What were the issues discussed in
16 that memorandum?
17 A. Well, basically, the one that I
18 have told you about -- whether or not
19 representatives of lawyers or lawyers of a
20 private party may contact employees of state
21 government to discuss with them issues
22 relating to litigation between the private
23 party and the state government.

1 And specifically, in addition to
2 obtaining information, also secure their
3 services and in some instances, as expert
4 witnesses.
5 Q. Upon review of that memorandum, did
6 you make any changes in your affidavit?
7 A. I don't think so. I think that

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8 what I did, if I recall at this point, is
9 that first of all, I spent some time in the
10 library. I spent some time on Westlaw.
11 I did review the brief or
12 memorandum that was provided to me. And
13 utilizing all resources, I then drafted the
14 affidavit. And I can't tell you now what
15 came from which source.
16 Q. Did you assist in the drafting of
17 the memorandum?
18 A. I did not.
19 Q. Do you know who drafted that
20 memorandum?
21 A. I do not.
22 Q. Prior to your research on the law
23 regarding contact by defense counsel of

1 state employees, had you ever done any
2 research or writing into that issue before?
3 A. I had done some research in
4 connection with my evidence course. I had
5 not done any writing.
6 Q. Had your ever provided expert
7 opinion on that issue in any other
8 litigation?
9 A. I had not.
10 Q. Since you've completed the
11 affidavit in late February 1996, have you
12 had any further discussions with either
13 Mr. Hewes, Mr. Colingo, or Ms. McDowell

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14 regarding your affidavit?

15 A. I have had a brief telephone

16 discussion with Mr. Hewes, which did not

17 relate to the substance of the affidavit.

18 Q. The look on your face requires me

19 to ask. What was the substance?

20 A. Well, it was about my bill that I

21 had submitted.

22 Q. Okay. I'll bite. What was your

23 bill? What was your bill for that

1 affidavit?

2 A. I think the charge was, at that

3 time, $225 an hour. And if I recall

4 correctly, I think the total amounted to

5 around $5,000.

6 Q. Did Mr. Hewes think your bill was

7 too high?

8 A. No. He said he thought it was very

9 much in order.

10 Q. And was that the last discussion

11 you had of that affidavit?

12 A. Yes.

13 Q. During your conversation with

14 Mr. Hewes regarding the bill for your

15 affidavit, did you discuss any other

16 possible work that you might do for him?

17 A. No, we did not.

18 Q. Now, when last we left Mr. Ferris,

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19 you had just telephone called him -- or
20 called him on the telephone -- to tell him
21 you would testify in the Moore case for
22 Lorillard; is that correct?
23 A. Yes.

1 Q. And when you were talking to
2 Mr. Ferris on the phone, what issues did you
3 discuss?
4 A. Only the matter of accepting their
5 request that we did not get into such
6 matters.
7 Q. Did you talk about what your hourly
8 charge would be?
9 A. Not on that -- not in that
10 conversation.
11 Q. Did you discuss how much time might
12 be involved in preparing for your testimony?
13 A. I don't think we did that time,
14 other than in a very general sense.
15 Q. Did Mr. Ferris discuss with you the
16 possibility of visiting the offices of
17 Shook, Hardy & Bacon?
18 A. No.
19 Q. Did Mr. Ferris disclose to you
20 that you would working with the law firm of
21 Shook, Hardy & Bacon?
22 A. Not in that conversation, to my
23 knowledge.

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Q. Since you spoke to Mr. Hewes in 1994 and today, have you visited the Shook, Hardy offices?

A. I have not.

Q. Besides Mr. Randles, do you know any other Shook, Hardy lawyers?

A. I do not.

Q. When was the next meeting to discuss the substance of your testimony here today?

A. As I recall, it was on January 31, 1997.

Q. In the materials that were provided to us relating to your testimony today, we got a letter and a list of issues. I wonder if you could tell me who attended that meeting on January 31st.

MR. NEWBOLD: I'm sorry. Which meeting?

MS. NIAL: January 31st.

A. January 31, 1997 meeting was attended by Bill Newbold and Billy Randles and Brooke Ferris.

MR. NEWBOLD: Parham, I think you misspoke.

A. I'm sorry. It was not Randles. It

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4 was Bob McDermott. I'm sorry.

5 Q. (By Ms. Nial) Bob McDermott. And

6 Mr. McDermott is with Jones, Day; is that

7 correct?

8 A. That's my understanding.

9 Q. And where did that meeting take

10 place?

11 A. That took place here in Birmingham.

12 Q. And how long did that meeting last?

13 A. That was essentially an all-day

14 meeting. It started around 9:00, and I

15 think they left around 3:30.

16 Q. I believe we found it. We'll make

17 this Exhibit 2 to this deposition.

18 (Plaintiff's Exhibit No. 2 was

19 marked for identification. A

20 copy is attached.)

21 Q. And Mr. Williams, I wonder if you

22 recognize Exhibit 2.

23 A. I do.

1 Q. And you recall receiving it?

2 A. I do.

3 Q. And to the best of your

4 recollection, were these the issues listed

5 on page 2 of Exhibit 2 -- were they the

6 issues that were discussed at the meeting on

7 January 31st?

8 A. Yes.

9 Q. Do you recall any other issues that

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10 were covered at that meeting?

11 A. It was a lengthy meeting. And the

12 conversation dealt with those issues,

13 principally. I think that was about -- it

14 may have been some more background,

15 historical information. I don't recall at

16 this point.

17 Q. Prior to the January 31st meeting

18 in Birmingham, did you receive any

19 documents?

20 A. I did.

21 Q. Do you recall what documents you

22 received prior to the meeting?

23 A. To the best of my recollection, I

1 received two volumes of a deposition by

2 Mr. W.C. Trotter. And I received a

3 compilation of cases which had been prepared

4 in the Butler litigation.

5 Q. Excuse me. That compilation of

6 cases -- were those cases compiled by

7 defendants or cases compiled by plaintiffs?

8 A. As I recall, they were cases

9 compiled by the defense.

10 Q. Any other materials?

11 A. I think there was a transcript of

12 the Crime Fraud hearing in the Florida case.

13 Q. Anything else?

14 A. If there was, I don't recall

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15 specifically at this point.

16 Q. Before you received the two volumes

17 of the Cham Trotter deposition, were you

18 familiar with Mr. Trotter?

19 A. I've known Mr. Trotter, yes, for

20 many years.

21 Q. In what capacity have you known

22 Mr. Trotter?

23 A. I first knew him when I had the

1 privilege of teaching him.

2 Q. Was he, like Mr. Ferris, a good

3 student?

4 A. Yes, he certainly was.

5 Q. Do you believe that Mister --

6 strike that. In your opinion, is

7 Mr. Trotter an expert in ethics?

8 A. Yes.

9 Q. Is this a transmittal letter

10 regarding the documents that you received

11 before the January 31st meeting? It's a

12 letter produced to us as part of the

13 materials relating to your deposition.

14 When Mr. Newbold and Mr. Randles

15 have an opportunity to review it, perhaps

16 you could identify it for the record.

17 MR. NEWBOLD: Are you going to mark

18 this as an exhibit?

19 MS. NIAL: Yes. Exhibit 3.

20 (Plaintiff's Exhibit No. 3 was

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21 marked for identification. A

22 copy is attached.)

23 (Deponent reviews document.)

1 A. Yes.

2 Q. Does that look familiar to you?

3 A. That's correct, yes.

4 Q. Looks like there are --

5 A. There are several other items which

6 I did not recall in response to the earlier

7 question. But those were included, and it's

8 dated January 3. I must have received it

9 either the next day or the subsequent day.

10 Q. So besides the case law prepared in

11 Butler by the defendants and the transcript

12 of the Florida Crime Fraud hearing -- in

13 fact, that's not listed on this list, is it?

14 We have the Defendant's Joint

15 Submission addressing CTR and CTR Special

16 Projects. Plaintiff's Response to

17 Defendant's Joint CTR-CTR Special Projects

18 filing. Defendants' reply to plaintiff's

19 response.

20 Plaintiff's supplemental response.

21 And then the deposition of Cham Trotter. So

22 you received the transcript of the Florida

23 case hearing some other time?

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A. I did.

Q. And before the January 31st meeting, do you recall whether or not you reviewed all the materials listed on Exhibit 3?

A. I believe by the time of the January 31st meeting, I had reviewed all of that.

Q. When did you next meet with defense counsel in preparation for this deposition?

A. My recollection is that we met in early March. And I think the date -- we met on a Friday and then again on the following Wednesday. And I think the dates may have been the 8th and the 13th. But I'd have to look at a calendar to be sure of that date.

Q. Were those both full-day meetings? Do you recall?

A. I believe so, yes.

Q. Before you met with tobacco defense counsel on the 8th and the 13th, assuming those are the correct dates, did you receive further documents?

A. My recollection is yes.

Q. Do you recall which documents you received?

A. I received documents in several packages. And I frankly don't recall which

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6 came at which time. They are those that are
7 listed on that documents reviewed list.
8 Q. When you went to the meeting on the
9 8th, had you reviewed, basically, all the
10 documents?
11 A. I think I had reviewed most of them
12 at that point. I probably had not finished
13 reviewing some that had come in later --
14 closer to that date of the meeting.
15 Q. Did anyone bring you any documents
16 to that meeting?
17 A. I don't recall.
18 Q. Did you, during that meeting, go
19 over any particular document that you
20 recall?
21 A. At the first meeting, I think we
22 did go over -- I think what we did was to
23 take a look at a book, which was also sent

1 to me -- "The Cigarette Papers."
2 Q. And when you looked at the book,
3 "The Cigarette Papers," what kinds of
4 discussions did you have about the book?
5 A. My attention was directed to
6 certain materials in the book. And I was
7 asked for my reaction to those.
8 Q. Do you recall which materials you
9 were directed to?
10 A. They were excerpts from documents.

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11 My recollection is they were contained in
12 Chapters 7 -- perhaps Chapter 8 -- of that
13 book.
14 Q. Do you recall what the substance of
15 those documents were?
16 A. They were a variety of internal
17 memos flowing from counsel for the tobacco
18 companies to other counsel to administrative
19 offices of the clients corporation -- things
20 of that sort.
21 Q. When you reviewed those documents,
22 did you ask any questions about the
23 background or context of those documents?

1 A. Yes.
2 Q. What kinds of questions did you
3 ask?
4 A. Well, I was curious. I wanted to
5 know more about their source -- where they
6 came from -- how they got published in that
7 book.
8 Q. Did the conduct discussed in any of
9 those documents disturb you?
10 MR. NEWBOLD: I object to the form
11 of the question unless you specify which
12 documents you're talking about.
13 Q. (By Ms. Nial) Could you be more
14 specific about the documents you reviewed in
15 Chapters 7 and 8 of "The Cigarette Papers"?
16 A. I'd have to see the copy of Chapter

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17 7. I just don't recall now which ones were
18 in there.
19 Q. Since we didn't know you reviewed
20 it, we didn't bring it with us. So it would
21 be difficult for us to know exactly which
22 documents you looked at. Do you remember
23 whether or not they were documents that are

1 a part of the so-called Brown and Williamson
2 collection?
3 A. That's my understanding.
4 Q. Did those documents discuss lawyer
5 involvement in scientific research?
6 A. Once again, I would want to see the
7 document before I comment specifically about
8 that.
9 Q. After you were directed to certain
10 documents discussed in "The Cigarette
11 Papers," did you ask tobacco defense counsel
12 to provide you with copies of the documents
13 discussed?
14 A. No. Because it was my
15 understanding that a privilege was being
16 asserted as to those documents.
17 Q. Did tobacco defense counsel, at
18 that meeting, ask you to opine as to the
19 appropriateness of tobacco counsel as --
20 appropriateness of the conduct of tobacco
21 counsel as discussed in those documents?

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A. Well, once again, I would want to see the document before answering

specifically. But there was an interchange in which I reacted to these brief excerpts that were included in the chapter.

Q. Do you recall what your reaction was to those brief excerpts?

A. I think my reaction was that in the context of the total document, these lawyers were doing what lawyers are supposed to do.

Q. Did the tobacco defense lawyers provide you with the context of the documents?

A. No. When you say the "context," do you mean the total document?

Q. Yes.

A. No.

Q. You said that within the context of the document, they were acting appropriately. And I was wondering what the context of the document was.

A. No. I have not seen the full document of any of these.

Q. Besides the full document, which you say you have not seen, what would be the

context of the document that would lead you

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to believe that the conduct discussed in those documents was appropriate?

A. Well, I gain the context from reading the excerpts and the materials in the chapter of that book -- Chapters -- if I recall correctly -- 7 and 8.

Q. Besides being directed to Chapters 7 and 8 of "The Cigarette Papers" at this meeting, were there any other particular documents to which you were directed?

A. I don't recall any specifically at this point, no.

Q. Were you asked at that meeting whether or not the attorney/client privilege should, in fact, apply to protect the documents discussed in Chapters 7 and 8 of "The Cigarette Papers"?

A. I don't recall that specific question being asked.

Q. Did you form an opinion at that time as to whether or not the attorney/client privilege should apply to

those documents?

A. Well, without having seen the entire text of the document, it would be difficult to say. But I think based on the excerpts that I saw, I felt confident that the attorney/client privilege would cover

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7 those actions.

8 Q. Would it be possible for another

9 person or lawyer to differ as to the --

10 differ from your opinion as to the

11 applicability of the attorney/client

12 privilege of those documents?

13 MR. NEWBOLD: Object to the form of

14 the question.

15 A. Well, it does call for speculation;

16 but I suppose people have differing opinions

17 about matters.

18 Q. (By Ms. Nial) Now after your

19 January 31st meeting -- I'm sorry. After

20 your March 8th and 13th meeting, did you

21 meet again with tobacco industry lawyers?

22 A. All right. There were those two

23 meetings in early March. And then the next

1 meeting occurred yesterday, March 31st.

2 Q. I forgot to ask you. As to the

3 March 8th and 13th meetings, if those are

4 the correct dates, did new people show up

5 besides Bill Newbold, Bob McDermott, and

6 Brooke Ferris?

7 A. Mr. Ferris and Mr. McDermott were

8 not at those meetings, as I recall; but

9 Mr. Randles was.

10 Q. And Mr. Newbold?

11 A. Yes. Of course Mr. Newbold.

12 Q. Has Mr. Newbold been your primary

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13 contact with Lorillard?

14 A. Yes.

15 Q. Now at yesterday's meeting, who was

16 in attendance?

17 A. Mr. Newbold and Mr. Randles.

18 Q. How long did yesterday's meeting

19 last?

20 A. Once again, it was essentially an

21 all-day meeting. It started a little after

22 8:00 concluded around 3:30.

23 Q. What was the substance of your

1 discussion with Mr. Newbold and Mr. Randles

2 yesterday?

3 A. We continued a discussion of my

4 testimony and matters related to that.

5 Q. What issues were discussed?

6 A. I think a broad range of issues

7 concerning the propriety of lawyer conduct

8 in given instances.

9 Q. What were the given instances that

10 you discussed?

11 A. Well, we talked about lawyer

12 conduct as evidenced in those excerpts from

13 the documents appearing in "The Cigarette

14 Papers" and then extrapolations from that --

15 illustrations, hypotheticals.

16 Q. Besides the documents that you were

17 directed to in "The Cigarette Papers," are

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18 there other documents or excerpts from
19 documents that you have reviewed that dealt
20 with lawyer conduct?
21 MR. NEWBOLD: I'm going to object to
22 the form of the question. Because I don't
23 think that the total documents were in "The

1 Cigarette Papers." I think it was excerpts
2 of documents in "The Cigarette Papers."
3 MS. NIAL: I thought I said "or
4 excerpts." But I will rephrase.
5 Q. (By Ms. Nial) Are there other
6 excerpts of other documents that you have
7 reviewed other than those in "The Cigarette
8 Papers"?
9 A. No. Only the material that's listed
10 in that review list.
11 Q. Did you request that tobacco
12 industry lawyers provide you with other
13 documents?
14 A. I did not.
15 Q. Besides the documents listed on the
16 list that was provided to us and "The
17 Cigarette Papers," which Mr. Newbold has
18 identified this morning, are there any other
19 documents that you have reviewed in
20 preparation for your testimony today?
21 A. No.
22 Q. I wonder if I could show you a list
23 of materials reviewed, which was produced to

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us and ask you if that's the list of the documents you have reviewed.

MR. NEWBOLD: I'm going to object. I believe that there was another page. There was a covering page.

MS. NIAL: Oh, yeah. There were cover pages.

MR. NEWBOLD: I think it's important if you're going to use the document to use the whole document.

MS. NIAL: (Handing document) There you go.

MR. NEWBOLD: Are you going to mark this.

MS. NIAL: Yes. As Exhibit 4.

(Plaintiff's Exhibit No. 4 was marked for identification. A copy is attached.)

Q. (By Ms. Nial) Are you familiar with those documents; first, the transmittal letter and then the list?

A. Yes.

Q. And Mr. Williams, did you prepare

the list that's now marked as part of Exhibit 4?

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A. I did.

Q. And you sent it to Mr. Newbold; is that correct?

A. That's correct. Or sent it to his paralegal, Michael Riechers, I think his name is.

Q. Michael -- Mr. Riechers. I also received a letter from Mr. Casetta of Thompson Coburn on March 24th enclosing a list of, quotes, Responsive Documents 1 through 3 saying that these are documents relating to Parham Williams' testimony that he believes we already have. "We" meaning me and Ness, Motley. I wonder if you've ever seen that letter.

(Plaintiff's Exhibit No. 5 was marked for identification. A copy is attached.)

Q. So there's no misunderstanding as to what you have reviewed in preparation for this deposition, I wonder if you could just

take a moment to review both of these lists so that I can ask you questions.

MR. NEWBOLD: May he also review the list that I sent to you of all the documents that he has reviewed? It's much longer than that.

MS. NIAL: Those are the only two lists I have. If you have another list,

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please provide it. Because I have no other lists.

MR. NEWBOLD: Well, you should have it. Can we go off the record?

(Off the record.)

A. This is Parham Williams, the witness, and I wanted to clarify an earlier answer. And I don't think you asked me this specifically when you were going through the sequence of meetings with counsel for the defendants.

And therefore I didn't respond specifically. But I think for your purposes you need to know that I did meet with Mr. Ferris on Tuesday, January 14 in Oxford,

Mississippi. And it was a very brief meeting.

And as I recall, it was largely devoted to discussing a time for the meeting -- a date and time for the meeting in Birmingham, which eventually was held on January 31st.

Then the second matter of clarification relates to the series of questions you asked me about providing expert witness services to various people. And you asked me about Brunini.

And you asked me about these

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people. But you did not asked me if I had represented -- excuse me -- if I had provided services to anybody else.

Q. I was actually going to get to that.

A. Are you? Okay. Well, I'll just wait for your question.

Q. But thank you for clarifying. I appreciate that. Let's get back to the documents in front of you. I believe that's

Exhibit 4 and Exhibit 5.

MS. NIAL: And Mr. Newbold, we've clarified the issue about the list, have we not.

MR. NEWBOLD: Yes.

Q. (By Ms. Nial) Having reviewed those two documents and with the addition of "The Cigarette Papers" that Mr. Newbold made earlier, are there other documents that you have reviewed in preparation for your testimony here today?

A. No.

Q. Do you intend to review any other documents in preparation for testimony that you may give at trial?

A. I may. But at this point, I don't know what they are. I can't identify them.

Q. Have tobacco defense counsel told you that they'd be asking you to review

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other documents?

A. No, they have not.

Q. When you attended the various meetings that we have discussed, did you

keep notes on those meetings?

A. I kept -- no, I didn't. I noted certain things such as dates and times. But I did not have specific notes about the substance of the conversations.

Q. Did you ever do memos to file to maintain your recollection of the issues that were discussed at those meetings?

A. No. I don't think I did. In fact, I know I did not.

Q. When you reviewed the documents that were provided to you by tobacco defense counsel, did you highlight those documents?

A. I did not. With one exception. I think I highlighted -- maybe it was the deposition of Dr. Spears. But I'm not certain about that.

It was one document that I did highlight. And then I thought, "I shouldn't be marking up these documents." And I didn't do it anymore.

Q. Why would you think you shouldn't mark up the documents?

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A. Well, it's misleading when someone else reads it.

Q. So I assume that you made no marginalia on any other documents.

A. No, I did not.

Q. Have you prepared a written report on any of the documents that you have reviewed?

A. I have not.

Q. Have you made any charts or summaries of any of these documents?

A. I have not.

Q. The documents on the lists in front of you -- in reference to the documents on the lists in front of you, are there particular documents in those lists that you feel that you will be relying on in your testimony today?

A. I will rely on the total body of these documents. And it depends on what sorts of questions are asked as to whether I would rely on a specific document.

Q. Now, Mr. Newbold told us that you

had a copy of "The Cigarette Papers." Besides Chapters 7 and 8, assuming those are the correct chapter numbers, have you read the entire book?

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5 A. I attempted to. And then I skimmed
6 it. But I concentrated on Chapters 7 and 8.
7 Q. Have you read "Ashes To Ashes"?
8 A. I have a copy, but I have not read
9 it.
10 Q. Have you reviewed any joint
11 prosecution or joint defense agreements
12 between and among tobacco defendants in your
13 case?
14 A. I have not.
15 Q. Have you asked to review any such
16 agreements?
17 A. I have not.
18 Q. We were going to discuss a little
19 bit more your other experiences as being an
20 expert in litigation besides the Moore case
21 about which we are talking today. Are there
22 other cases in which you have appeared as an
23 expert?

1 A. Yes.
2 Q. Could you tell me what those cases
3 were, please?
4 MR. NEWBOLD: You say "appear." Do
5 you mean appear as a witness?
6 MS. NIAL: Either appear in
7 deposition or appear in trial or both.
8 A. No.
9 Q. (By Ms. Nial) Are there cases in

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10 which you were consulted as an expert

11 witness?

12 A. Yes.

13 Q. And what cases were those?

14 A. The only other case is one that

15 occurred back in October and November of

16 1996 -- this past fall. And that was a case

17 that occurred in the state of Kentucky.

18 Q. What was the name of that case? Do

19 you recall?

20 A. I do not recall the style of it.

21 Q. Was that a case that involved any

22 tobacco company?

23 A. No.

1 Q. Do you recall what the issue was on

2 which you were consulted?

3 A. I do.

4 Q. And what was that issue?

5 A. Well, the issue was whether the

6 trial judge, during the pendency of a motion

7 for new trial, improperly accepted an award

8 from the Kentucky Trial Lawyers Association.

9 Q. Was this issue raised in an attempt

10 to disqualify the trial judge?

11 A. I believe it was, yes.

12 Q. And were you on the side of the

13 persons trying to disqualify the trial

14 judge?

15 A. No.

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16 Q. Do you recall who, in fact, you
17 were appearing as a -- or -- strike that.
18 Who you were working for as an expert in the
19 case?
20 A. Yes.
21 Q. Who was that?
22 A. Don Barrett.
23 Q. Did you know Mr. Barrett before you

1 worked for him in this case in the state of
2 Kentucky?
3 A. I've known him all of his life,
4 yes.
5 Q. Did you teach him in law school?
6 A. I did teach him in law school.
7 Q. Was he a good student?
8 A. He, too, was a great student.
9 Q. Besides Mr. Barrett, Mr. Ferris,
10 Mr. Hewes, and maybe the rest of the known
11 world, who else involved in this litigation
12 are your friends or students?
13 A. You mean in the total tobacco --
14 the Mississippi Attorney General --
15 Q. In the tobacco litigation about
16 which we are here today.
17 MR. NEWBOLD: Well, you said
18 "friends or students." Could you restate
19 it?
20 Q. (By Ms. Nial) Friends or students.

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21 And if you can identify if a person is a

22 friend or student.

23 A. Well, I suspect that almost all

1 counsel on both sides would qualify either

2 as a former student or friend. And I, you

3 know -- frankly, I don't recall who

4 represents who, but if I could see the list,

5 I could check them off for you.

6 Q. Anyone else involved in the

7 litigation a student?

8 A. No. I think only those attorneys

9 that we are talking about.

10 Q. In the case in Kentucky, you were

11 not deposed; is that correct?

12 A. That's correct.

13 Q. Did you offer an affidavit?

14 A. I did.

15 Q. Was that affidavit filed with the

16 court?

17 A. I do not know the answer to that.

18 I submitted it, and that was it.

19 Q. Was the trial judge, in fact,

20 disqualified?

21 A. I do not know the results of the

22 matter.

23 Q. Do you know what the substance of

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1 the case was?

2 A. As I recall, yes, I do. It was a

3 suit against certain defendants for

4 environmental pollution damages. And I don't

5 recall any of the details beyond that.

6 Q. Besides your work as an expert for

7 Mr. Barrett in the state of Kentucky, have

8 you done any other work as an expert?

9 A. You said "in the state of

10 Kentucky"?

11 Q. No. Besides the work that you did

12 in the state of Kentucky, are there any

13 other instances?

14 A. No, I don't think so.

15 Q. And you've never been deposed

16 before, have you?

17 A. I have been.

18 Q. Under what circumstances were you

19 deposed?

20 A. When I was Dean of the Law School

21 at the University of Mississippi, there was

22 a suit filed against the University, the

23 Board of Trustees, the Dean, and the

1 Chancellor of the University. And I

2 testified in that through deposition.

3 Q. And what was the substance of that

4 litigation?

5 A. Certain students at the Law School

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felt they had been unfairly discriminated against in grading and retention policies of the Law School.

Q. Was it a racial discrimination case?

A. Essentially so, yes.

Q. Was it brought in federal court?

A. It was.

Q. Did I hear you correctly that you were a individual defendant in that case?

A. Yes. As I recall, the Dean, the Chancellor, and perhaps there were other individual defendants as well as the entities themselves.

Q. Were you represented separately by an attorney in that case?

A. I was.

Q. Who was that attorney?

A. Joel Blass.

Q. Was his representation paid for by the University?

A. My recollection is yes.

Q. What was the outcome of that litigation?

A. There was a consent decree.

Q. What was the substance of the consent decree, if you recall?

A. As I recall, the Law School, the University, and the Board agreed to provide

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12 a certain sum for scholarships for minority
13 persons who wished to go to Law School.
14 I do not believe over -- of course,
15 I'm trying to remember 22 years ago. I
16 don't think there was any lessening of
17 retention or grading standards involved in
18 the consent decree. But I think there was a
19 commitment to provide scholarships.
20 Q. Now you mentioned that was 20
21 something years ago.
22 A. I think that was in 1973 or '74.
23 Q. So when you testified in this

1 particular case that we've just been
2 discussing, you were testifying as a party
3 defendant?
4 A. Yes. I did not testify, now. I
5 simply gave a deposition.
6 Q. Any other times in which you've
7 been deposed?
8 A. No. That's the only time I've been
9 deposed.
10 Q. I wonder if we could talk a little
11 bit about your disclosure statement.
12 MR. NEWBOLD: His 26 (b)?
13 MS. NIAL: Yes.
14 Q. (By Ms. Nial) And I believe that
15 your disclosure statement, if I'm not
16 correct, was accompanied by your curriculum

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17 vitae.

18 A. I think that's correct. I don't

19 know that. But at some point, I submitted a

20 CV.

21 Q. It says, "See attached curriculum

22 vitae." That's what I'm basing it on.

23 A. Okay.

1 Q. I wonder if you could tell me,

2 Mr. Williams, if that is a true and correct

3 copy of your 26 (b) statement?

4 A. Okay.

5 MS. NIAL: (To the court reporter)

6 And if we could identify that as an exhibit.

7 (Plaintiff's Exhibit No. 6 was

8 marked for identification. A

9 copy is attached.)

10 (Deponent reviews document.)

11 A. Is the question, "Is this correct"?

12 Q. Is that your 26 (b) statement and

13 attached CV?

14 A. Yes, it is.

15 Q. I wonder if we could talk a little

16 bit about 26 (b) expert statement. Did you

17 prepare the 26 (b) expert statement?

18 A. I did not.

19 Q. Who prepared the expert statement?

20 A. I do not know.

21 Q. Who did you receive the draft of

22 the --

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23 A. My recollection is it came from

1 Mr. Newbold.
2 Q. Did you make any changes to the
3 26 (b) statement when you received it?
4 A. I reviewed it, and it was in accord
5 with our conversations. I did not make any
6 changes.
7 Q. So would I be correct in assuming
8 that the 26 (b) statement accurately
9 reflects the opinions that you intend to
10 give?
11 A. Yes.
12 Q. The curriculum vitae attached to
13 the 26 (b) statement -- who drafted that?
14 A. I did.
15 Q. And is this an up-to-date
16 curriculum vitae as of today?
17 A. As to present positions, yes. It
18 does not reflect the change that will occur
19 in June.
20 Q. And the change that will occur June
21 of this year is what?
22 A. Well, June the 1st, I will become
23 the Vice President of Chapman University --

1 C-H-A-P-M-A-N -- in Orange, California. And

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2 Dean of the Law School there.

3 Q. Congratulations.

4 A. Thank you.

5 Q. And what moved you to leave lovely

6 Alabama to go to California?

7 A. It was not an easy decision. But

8 Chapman offers a unique challenge and a

9 wonderful opportunity. It's an old,

10 established university started in 1861. And

11 it has a reputation as a quality academic

12 institution.

13 Just two years ago, the trustees

14 and the president decided to start a new law

15 school. This is an experience that I have

16 not had, but it was one that was very

17 intriguing to me.

18 They needed guidance in working

19 through the American Bar Association

20 requirements leading to provisional approval

21 of the Law School. And I suspect that's why

22 they identified me as having had some

23 experience in the past with that.

1 So I saw it as a great opportunity.

2 My wife was excited about it. And all my

3 children wanted me to go, so I did.

4 Q. I'm assuming that the experience

5 that you're identifying that's going to be

6 helpful in your new post is the experience

7 described under academic consultations.

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8 A. That would be particularly useful,
9 yes.
10 Q. And you've spent a lot of time
11 reviewing the accreditation status of a
12 number of law schools; is that correct?
13 A. Typically, those site visits last
14 three to three and a half days. Then there
15 is an intensive review of substantial amount
16 of documents, and then a report is prepared
17 based on that.
18 Q. Will you be teaching at all when
19 you go to Chapman?
20 A. Not initially.
21 Q. I wonder if we could talk a little
22 bit about your bill, if we may. This is a
23 document that was produced to us as one of

1 the documents relating to your testimony.
2 (Plaintiff's Exhibit No. 7 was
3 marked for identification. A
4 copy is attached.)
5 Q. Mr. Williams, is this the bill that
6 you've provided to Mr. Newbold?
7 A. Yes, it is.
8 Q. Does the bill, up until the last
9 date on the bill, 3/17/97, correctly
10 identify the time that you have spent
11 working on this case?
12 A. Yes, it does.

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13 Q. How did you bill Mr. Hewes for the
14 meetings and telephone calls you had in
15 1994?
16 A. A similar bill.
17 Q. Do you have a copy of that bill?
18 A. I do not with me, if that's what
19 you're asking.
20 Q. I note that you're charging a
21 little bit more for this work.
22 A. Yes. Because I will give testimony
23 in this case.

1 Q. So when you actually have to
2 testify in court, you charge $300 an hour?
3 A. Yes.
4 Q. How did you determine the $300 an
5 hour charge?
6 A. After discussions with, primarily,
7 Mr. Ferris and subsequently with
8 Mr. Newbold.
9 Q. Is there anything you would like to
10 add to this list of expenses and time spent
11 on this case?
12 A. I don't think so. I hope I didn't
13 leave anything out.
14 Q. I assume that you intend to provide
15 them with a bill for yesterday's meeting?
16 A. I do.
17 Q. Have you been paid pursuant to that
18 bill?

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19 A. I have.

20 Q. And from whom did you receive a

21 check?

22 A. The check came from Mr. Newbold's

23 office.

1 Q. Has Mr. Newbold discussed with you

2 any possibility of testifying in other

3 tobacco litigation cases?

4 A. Other cases? No.

5 Q. Mr. Williams, are you familiar with

6 the Mississippi Rules of Professional

7 Conduct?

8 A. I am.

9 Q. I wonder have you reviewed recently

10 the preamble to that -- to the Rules of

11 Professional Conduct -- the Mississippi

12 Rules of Professional Conduct?

13 A. When you say recently, yes, within

14 the past, I would say, two or three months,

15 I have.

16 Q. Would you agree that a lawyer has

17 three distinct responsibilities?

18 A. May I see the preamble, since we'll

19 be talking about it?

20 Q. Sure. (Hands book.) In fact, it's

21 contained in the first line of the preamble.

22 "A lawyer is a representative of clients,

23 an officer of the legal system, and a public

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1 citizen having special responsibility for
2 the quality of justice."
3 A. Are you asking do I agree with
4 that?
5 Q. Do you agree with that?
6 A. Yes, I do.
7 Q. Do you agree that there are certain
8 limitations on the representation that a
9 lawyer may provide to a client?
10 A. I agree that there are certain
11 limitations, yes.
12 Q. Could you describe for me what
13 limitations you believe there are on the
14 representation that a lawyer can provide to
15 a client?
16 A. Well, one that occurs is the
17 limitation under Mississippi Rule of
18 Evidence 502 (d)(1), which is a Crime Fraud
19 Exception attorney/client privilege.
20 Q. And how does that 501 (d)(1) Crime
21 Fraud Exception --
22 A. 502.
23 Q. I'm sorry 502 (d)(1) Crime Fraud

1 Exception provide limits on an attorney's
2 representation of a client?
3 A. Because it limits the effect of the

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4 privilege by providing that if the advice is
5 given to enable or aid someone to commit or
6 plan to commit a crime or fraud and the
7 client reasonably should have known that,
8 then the privilege is dissipated.
9 There are also provisions in the
10 Rules of Professional Conduct that
11 specifically prohibit a lawyer from
12 providing information enabling or aiding a
13 client to commit a crime or fraud.
14 Q. As an officer of the legal system,
15 does a lawyer have any special
16 responsibility, for example, of candor to a
17 tribunal?
18 A. Well, a lawyer is an officer of the
19 court. That is generally regarded as a
20 threshold function of the legal profession.
21 And I believe that the lawyer does have an
22 obligation of candor.
23 Q. Do you know what fraud upon the

1 court is?
2 A. I'm not sure, no.
3 Q. Do you understand that a lawyer who
4 participates in offering fraudulent
5 testimony to a court may be guilty of fraud
6 upon the court?
7 A. I would accept that definition of
8 it, yes.

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9 Q. Would a lawyer who participates in
10 fraud upon the court be violating his
11 ethical responsibilities to the legal
12 system?
13 A. If he gives false testimony or aids
14 a witness to give false testimony?
15 Q. Correct.
16 A. Which is the question?
17 Q. Both. And you can separate them
18 down if you'd like.
19 A. Well, I would certainly say that a
20 lawyer who gives false testimony would be
21 committing a fraud upon the court.
22 And under the Code of Professional
23 Responsibility, if he knowingly permits a

1 witness to give false testimony, then he --
2 the lawyer has violated the respected Rule
3 of Professional Conduct.
4 Q. If a lawyer knowingly fails to turn
5 over relevant evidence to an opposing party,
6 is he violating any ethical rule?
7 MR. NEWBOLD: Object to the form of
8 the question.
9 Q. (By Ms. Nial) You may answer.
10 A. Are you asking me to assume that
11 this is pursuant to a order of the court --
12 Q. Yes.
13 A. -- to disclose and turn over?
14 Well, I would think if the court order

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15 specifically directs the lawyer to turn that
16 over, then the lawyer should obey the rule
17 and order of the court.
18 Q. If the lawyer participates in a
19 scheme -- or plan, if you'd like -- by which
20 he sets up a system to create a claim of
21 privilege with the goal of keeping
22 information from an adversary in litigation,
23 is he breaching any ethical duty?

1 MR. NEWBOLD: Objection to the form
2 of the question and the use of the word
3 "scheme."
4 Q. (By Ms. Nial) Or plan. However you
5 would like to interpret those words.
6 A. Well, let's make sure of what I am
7 being asked to assume. First of all, I'm
8 being asked to assume that a lawyer is
9 representing a client --
10 Q. Correct.
11 A. -- engaged in litigation.
12 Q. Correct.
13 A. And that there is a court order
14 directing the disclosure of certain material
15 in the hands of that lawyer's client; is
16 that correct?
17 Q. No. Let's back up for a second.
18 The lawyer is representing a client who is
19 involved in litigation. And he sets up a

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20 program of documents --

21 A. "He" being the lawyer?

22 Q. "He" being the lawyer. Sets up a

23 program of document handling in order to

1 have a claim of privilege which can be made

2 relating to the documents that go through

3 that program of document handling in order

4 to keep those documents away from an

5 adversary.

6 A. Well --

7 MR. NEWBOLD: Object to the form of

8 the question. I don't think there's a

9 question in there. There's a string of

10 assumptions, but no question.

11 Q. (By Ms. Nial) We'll try again. The

12 question begins: Does a lawyer violate his

13 ethical duty -- any ethical duty that he

14 has -- either to the court or to his

15 adversary if he, while representing a client

16 in litigation, sets up a program for

17 document handling in order to be able to

18 make a claim of privilege and thus keep

19 relevant information from an adversary?

20 MR. NEWBOLD: Objection to the

21 form. Use of the word "program for document

22 handling."

23 Q. (By Ms. Nial) Could you answer the

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question, please?

A. Yes. My answer would be this: First of all, I need to know more of the facts in order to intelligently answer the question.

There could be other reasons why the lawyer would wish to review or screen documents in the hands of the client or in the hands of other parties having a common interest in the litigation.

So I would have to know the answer to that first before I could give you an answer that would be meaningful.

Q. If I gave you the answer that the only reason the lawyer has set up this program for document handling is to be able to make a claim of privilege so as to keep those relevant documents from an adversary in litigation.

A. My answer --

MR. NEWBOLD: I object to the form of the question, because there's no question.

Q. (By Ms. Nial) The question is whether a lawyer has violated any ethical duty either to the court or to his adversary if he develops a program of document

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5 handling for the only purpose of being able
6 to claim a privilege so as to keep relevant
7 evidence from an opposing party?
8 A. All right. Assuming that that is
9 the only purpose for handling the documents
10 in the fashion you have described, I believe
11 that the -- first of all, the effort to
12 create a privilege for documents is -- for
13 that sole purpose -- is not a worthy purpose
14 for the lawyer to engage in.
15 And I would conclude that if that
16 is the only purpose for which the documents
17 are received, then that lawyer is not being
18 ethically valid. He is not performing in a
19 way a lawyer should perform.
20 Q. Should the claim of privilege that
21 is made as a result of the program we have
22 just discussed in the previous question
23 survive?

1 A. The claim of privilege would
2 certainly survive as to other documents as
3 to which it may legitimately be claimed. It
4 may -- it may prevail to protect documents
5 that are brought in. My opinion is that it
6 probably should not prevail as to those
7 documents.
8 Q. As to the documents that went
9 through the program --
10 A. For the specific purpose of

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11 shielding them under the lawyer's control in
12 order to create a privilege.
13 Q. Is it appropriate for a lawyer
14 representing a client in litigation to take
15 actions against a witness in order to stop
16 that witness from testifying?
17 A. Well, I'd have to know more about
18 the facts. What sorts of actions?
19 Q. Bring a collateral lawsuit against
20 the witness in order to stop the witness
21 from testifying against his client.
22 A. What is your question?
23 Q. Is a lawyer permitted -- ethically

1 permitted -- to intimidate a witness through
2 collateral litigation?
3 MR. NEWBOLD: I object to the form
4 of the question -- use of the word
5 "intimidate."
6 A. Well, if there is a legitimate
7 cause of action, the lawyer's breaching no
8 ethical standard by filing the action.
9 Q. If it is an illegitimate cause of
10 action brought for only one reason; that is,
11 to stop the witness from testifying against
12 his client, is that an appropriate ethical
13 activity for a lawyer?
14 A. Well, once again, it depends on
15 more facts than you're giving me. For

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16 example, if the action is to prevent a
17 person from utilizing stolen documents in
18 testifying, there may be a legitimate cause
19 of action.
20 Q. If the testimony does not involve,
21 quotes, stolen documents, does that make a
22 difference to your opinion as to whether or
23 not action by an attorney to intimidate a

1 witness through a collateral lawsuit is
2 appropriate?
3 A. Once again, I need some more
4 information. Are you asking me to assume
5 that this is an action to stop a witness
6 from testifying about documents in his
7 possession?
8 Q. The witness testifying about
9 information regarding the lawyer's client
10 that would be damaging to the lawyer's
11 client. And therefore, the lawyer has taken
12 the action -- lodged the complaint -- in
13 order to stop that witness from testifying.
14 MR. NEWBOLD: Objection to the form
15 of the question.
16 A. Well, once again, my answer would
17 have to be that if there is a legitimate
18 cause of action, then the lawyer's justified
19 ethically in filing that case.
20 Q. Same facts, illegitimate cause of
21 action.

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22 A. Well, would you give me an example?

23 I'm not sure I understand what you're asking

1 me here.

2 Q. A witness is a former employee of a

3 defendant. He has no confidentiality

4 agreement. He has no reason to be barred

5 from testifying. But the lawyer brings a

6 collateral action against that witness for

7 the purpose of stopping that witness from

8 testifying against his client.

9 MR. NEWBOLD: I want to object to

10 the form. You keep saying "the lawyer

11 brings an action." Do you mean the lawyer

12 brings an action on behalf of a client? Or

13 do you mean the lawyer is suing -- is filing

14 a first-party lawsuit?

15 Q. Assuming that a lawyer can only

16 file a lawsuit for a client -- and let us

17 have that general assumption. So the lawyer

18 brings a lawsuit on behalf of his client.

19 The lawsuit is collateral. It has no basis.

20 There's no confidentiality

21 agreement. There is absolutely no basis to

22 bring this lawsuit. However, he brings the

23 lawsuit for the purpose of stopping the

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witness from testifying.

A. I would ask one more bit of information. How did the witness acquire the information that he is going to use for his testimony?

Q. He is a former employee of the defendant.

A. And may I assume that he acquired it from the files of his former employer?

Q. Not from the files, but simply by being there.

A. Well, you've asked me to assume an awful lot. And I would say the short answer is if there is no legal basis for cause of action and the lawyer participates filing a case on behalf of a client for the only purpose of intimidating a potential witness against his client and there is no other reason such as the acquisition of -- or the improper acquisition of information from the witness's former employer.

If you ask me to assume that -- no other reason. Then my answer would be that

the act to intimidate the witness probably is improper.

Q. Is it appropriate for a lawyer in order to stop a witness from testifying against his client to engage investigators in order to put together a dossier on a

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witness which the lawyer then provides to the press for the purposes of stopping the witness from testifying against his client?

MR. NEWBOLD: Objection to the form of the question.

A. The question is: Is that ethical or proper?

Q. Uh-huh.

A. The lawyer has an obligation to adequately and effectively represent his client. And in the course of that representation, it may, and often, becomes necessary for the lawyer to identify areas where there are gaps in information or knowledge.

And to seek to fill those gaps in various ways by the use of investigators,

other techniques, which will provide the needed information necessary to enable the lawyer to effectively represent the client.

Q. So it's your opinion, if I'm correct -- and please correct me if I'm wrong -- that a lawyer that engages an investigator in order to put a dossier together on a witness which he intends to publicize in order to stop the witness from testifying against his client is acting appropriately?

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A. In preparing to cross a witness, it should be a function of the lawyer to acquire as much information about the witness and the subject matter of his testimony as possible.

And it may be necessary to compile what you call a dossier, or collection of information, about the witness. I see nothing wrong with that. That's part of a lawyer function.

Q. And you see nothing wrong with the lawyer taking that information and

publicizing it in order to stop that witness from testifying? Publicizing it, not in the courtroom, you understand, but in the public media.

MR. NEWBOLD: I object to the form of the question. It calls for speculation on the part of the witness.

MS. NIAL: The witness is an expert.

MR. NEWBOLD: I still object to form of the question.

MS. NIAL: And I'm asking him a hypothetical.

A. You're asking me, then, to assume that in addition to performing an investigation, or having it performed, and compiling materials relating to that witness and his credibility. Because obviously

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18 that's going to be the thrust of the
19 lawyer's cross.
20 And further to assume that the
21 lawyer then authorizes the publication of
22 that -- you used the term "publicized." How
23 would that be publicized? Help me with

1 that.
2 Q. He walks into CBS and says, "Here's
3 some bad stuff on this witness. How about
4 putting it on television?" That's how he
5 publicizes it.
6 A. I see. Well, my view of that is
7 that the lawyer is performing legitimate
8 lawyer functions. I would think that the
9 publicizing would be unwise. I don't know
10 that it violates any ethical responsibility
11 of the lawyer.
12 Q. So that is a legitimate legal
13 function in your opinion?
14 A. I think it's an unwise function.
15 But I am not -- I don't believe that it
16 violates any of the standards of
17 professional responsibility.
18 Q. Are you aware of any ethical rule
19 that might prohibit a lawyer from
20 participating in the presentation of
21 deceptive information to a legislative body?
22 MR. NEWBOLD: Could I hear that

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question again, please?

Q. Are you aware of any ethical rule which would prohibit a lawyer from participating in the presentation of deceptive testimony to a legislative body?

MR. NEWBOLD: Objection to the form of the question -- the use of the word "deceptive."

A. Well, the Rules of Professional Conduct require the lawyer to make honest presentations. That is, not to knowingly present false evidence to a court. A legislative hearing is not the same sort of body as a court.

But I would be of the opinion that if the lawyer -- and you're asking me to assume that misinformation -- misleading information is given to the legislative body. That that is improper for the lawyer to do.

Q. Let's go back a little bit back in time to your resume. I was struck by the fact that you managed a complete law school in less than a year after you graduated from

undergrad. How did you do that?

A. Well, it wasn't by virtue of super

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3 intelligence, I assure you of that. But at
4 that time, the University of Mississippi Law
5 School and the University itself had a
6 policy which permitted a student to complete
7 three years of undergraduate work and then
8 to enter law school.
9 And in two years plus two summers
10 acquire the necessary number of hours. And
11 as I recall at that time, 82 credit hours
12 were required in law school. So that's the
13 explanation of how that happened.
14 Q. Excellent explanation. You got an
15 LL.M. from Yale.
16 A. Yes.
17 Q. What is the specialty?
18 A. Yale, at that time, offered a
19 general Master of Laws degree for persons
20 who wished to go into law teaching. And
21 that was the degree program I followed.
22 Q. And you did your LL.M., if you
23 will, at the same time you were teaching at

1 the University of the Mississippi; is that
2 correct?
3 A. No. I was on leave for the
4 academic year 1964-65.
5 Q. That's when you had the Sterling
6 Fellowship?
7 A. That's correct.

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8 Q. And what is the Sterling
9 Fellowship?
10 A. Sterling was a prominent New York
11 lawyer. In fact, the law firm of Shearman &
12 Sterling bears his name. He was a Yale
13 graduate and a very generous philanthropist
14 to Yale and established this endowed
15 scholarship back probably at the beginning
16 of this century.
17 Q. And how did you manage to get the
18 Sterling Fellowship?
19 A. I applied for it. And there is a
20 process, as I recall and understand, of
21 review and selection. And based on that, I
22 was awarded the scholarship.
23 Q. Was there any particular field of

1 study that you had to follow to get the
2 Sterling Fellowship?
3 A. Well, I had to have a law degree,
4 first of all. Then I had to indicate an
5 interest in going into law teaching. And I
6 might point out that the Sterling
7 Fellowships are given in other fields at
8 Yale, not just the Law School.
9 Q. I noticed that you were in private
10 practice for a short period of time.
11 A. Yes.
12 MR. NEWBOLD: Object to the form of
13 the question -- short. Nothing's short in

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14 practicing law.

15 MS. NIAL: It looked short to me.

16 '56 to '57.

17 Q. (By Ms. Nial) How long were you in

18 private practice?

19 A. I began in the fall of 1956 and

20 actually continued until 1963. At that

21 time, Mississippi's statutory scheme

22 permitted a lawyer to be elected District

23 Attorney and serve in that capacity on a

1 part-time basis and continue private law

2 practice. And that was the course I

3 followed.

4 Q. And what kind of practice did you

5 have?

6 A. General small town practice --

7 rights, wills, deeds, things of that sort.

8 Q. Did you do criminal defense work

9 prior to you becoming District Attorney?

10 A. No, I did not.

11 Q. You were District Attorney for --

12 let me see.

13 A. About seven years, as I recall --

14 six years.

15 Q. Did you have a good win/loss

16 record?

17 A. Well, it was good enough to get

18 reelected.

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19 Q. Any capital cases?

20 A. Yes. But there was never a capital

21 verdict during that time.

22 Q. What made you leave, quotes,

23 private practice to go into teaching?

1 A. I had always wanted to do that.

2 And an opportunity developed at the

3 University of Mississippi Law School to

4 teach for a year.

5 And then during that time, apply

6 for the Sterling Fellowship. The

7 understanding was if I successfully

8 completed the Master of Laws degree, then I

9 would have a position at the Law School.

10 Q. Would it be fair to say -- and

11 please do correct me if I'm wrong -- that

12 your primary experience in private practice

13 would be in the criminal area?

14 A. Yes.

15 Q. What did you teach when you were a

16 visiting professor at the University of

17 Mississippi School of Law in the fall

18 semester of 1996?

19 A. I taught evidence.

20 Q. Are you writing an article on

21 tobacco litigation currently?

22 A. No, I am not.

23 Q. Do you intend to?

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A. Well, it's intriguing. But at this point, I do not plan to.

MS. NIAL: I wonder, Mr. Newbold, if we should take a break now. It's ten past twelve.

MR. NEWBOLD: Fine with me. It's really ten past eleven.

MS. NIAL: Oh, I'm sorry. We'll continue.

MR. NEWBOLD: I was going to ask for a break, though, at 11:25.

MS. NIAL: We can take it now.

(Recess taken.)

Q. (By Ms. Nial) We were talking about your CV when we left. I don't notice, but perhaps I'm missing it.

MR. NEWBOLD: Pardon me. I can't speak for Deirdre Fox, and she represents somebody that I don't represent. So I'll --

MS. NIAL: We'll wait for Ms. Fox to return.

(Long pause.)

(Ms. Fox returns.)

Q. (By Ms. Nial) We were going to talk a little bit more about your CV. I wonder if you could identify for me on your CV any

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4 articles or books or presentations that you
5 have given on legal ethics.
6 A. The book, which discusses it, in
7 sort of summary fashion, is this
8 "Mississippi Evidence" book. It, by no
9 means, is a in-depth discussion of it. It
10 simply discusses the attorney/client
11 privilege and the parameters of that.
12 Q. "The Comparison of Federal and
13 Mississippi Rules of Evidence"?
14 A. No. It's --
15 Q. On which page?
16 A. It's entitled "Mississippi
17 Evidence" on page 5.
18 Q. Okay. With Dr. Carolyn Ellis
19 Staton?
20 A. Staton.
21 Q. Staton.
22 A. Correct.
23 Q. And in that book, you've discussed

1 the attorney/client privilege and the Crime
2 Fraud Exception?
3 A. Yes. In various summary fashion.
4 Q. Any other discussion of the ethical
5 rules in any of your other publications?
6 A. I believe that this one that you
7 mentioned a moment ago, "Comparison of
8 Federal and Mississippi Rules" also deals
9 with the privilege -- the attorney/client.

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10 But once again, not in any detailed fashion.

11 Q. Are you an ethics expert,

12 Mr. Williams?

13 A. I think that based on my

14 experience, the readings that I have done,

15 the practice as well as the teaching of

16 ethics, yes, I am.

17 Q. Did I misunderstand you? I thought

18 you had not taught an ethics class.

19 A. I have not taught an ethics class

20 specifically. But as I mentioned earlier,

21 ethics permeates, particularly, the law of

22 evidence and also, to a marked extent, the

23 law of crime -- criminal procedure and

1 criminal law.

2 And I have -- well, I guess more

3 than 30 years have dealt with the ethical

4 considerations that arise in the course of

5 teaching those classes.

6 Q. Are you familiar with professor

7 Samuel Dash of Georgetown University?

8 A. Yes, I know who he is.

9 Q. Do you recognize professor Sam Dash

10 as an ethics expert?

11 A. He's certainly an expert on

12 criminal law. And I think he probably has

13 done enough writing in ethics to qualify,

14 yes.

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15 Q. And what about Jeffrey Hazzard?

16 A. Yes, I do. If you're asking me do

17 I recognize him as an expert --

18 Q. Do you recognize Jeffrey Hazzard as

19 an expert?

20 A. Yes, I do.

21 Q. Beside the two publications that

22 we've discussed, are there any other

23 publications on your CV that deal

1 specifically with ethics rather than the

2 permeation concept that we've previously

3 discussed?

4 A. Were there any that are devoted

5 solely to that topic?

6 Q. Yes.

7 A. No, there are not.

8 Q. Have you ever given any seminars on

9 legal ethics?

10 A. Let me look again. I don't recall

11 one that dealt specifically with legal

12 ethics. But once Mississippi changed its

13 continuing legal education rules to require

14 certain training in ethics, in the back of

15 my mind, I have a recollection of having

16 participated in one of those and giving a

17 lecture. But I can't identify it by date

18 and place.

19 Q. Have you served on any committees

20 dealing with the issue of legal ethics?

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21 A. Specifically referring to bar
22 committees?
23 Q. For example, a bar committee.

1 A. A bar committee? The committee
2 that probably involved that most closely was
3 the Drafting Committee, which was a
4 subcommittee of the Advisory Committee to
5 the Mississippi Supreme Court on rules.
6 I was Chair of that committee and
7 also Chair of the Drafting Committee for the
8 Mississippi Rules of Evidence. And in the
9 course of that, we had, of course,
10 consideration of Article 5 and the
11 implications of the attorney/client
12 privilege and the reflected ethical
13 considerations there.
14 Q. And again, that did not deal
15 specifically with the area --
16 A. It wasn't titled ethics, no.
17 Q. Have you served on any grievance
18 committees?
19 A. No, I have not.
20 Q. Have you consulted with any
21 grievance committees on the issue of ethics?
22 A. No, not to my recollection.
23 Q. Are you an active member of the Bar

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1 in Mississippi?

2 A. Not at this time. I am on what is

3 called inactive status.

4 Q. How about of the Bar in Alabama?

5 A. No.

6 Q. Do you intend to become an active

7 have member of the Bar in California?

8 A. I probably will, but not in the

9 sense that I will be a practitioner. If

10 they have a similar program as Mississippi,

11 which permits one to be an affiliate member

12 or nonpracticing member, I think is the way

13 it's described. Yes, I would like to do

14 that.

15 Q. You don't intend to take the

16 California Bar?

17 A. There are other things I would need

18 to be doing.

19 Q. Well, I understand that. In

20 connection with your testimony in this case,

21 have you reviewed any ethics opinions that

22 have been issued by the Bar or the Supreme

23 Court in the state of Mississippi?

1 A. No, I have not.

2 Q. Have you reviewed any ethics

3 opinion issued by any Bar, grievance

4 committee, or court in any state?

5 A. Not ethics opinions as such, no.

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6 Q. What ethical materials -- back up.
7 What materials relating to ethics have you
8 reviewed in preparation for your testimony
9 here today?
10 A. I reviewed the Code of Professional
11 Responsibility, that is the Mississippi
12 Code. And the Mississippi Rules of
13 Evidence; specifically, Article 5.
14 Q. Have you ever done any appellate
15 consulting work?
16 A. I don't recall any specific
17 instances. I don't think so.
18 Q. I assume that you've taken the Bar
19 exam in Mississippi. Are there -- is that
20 correct?
21 A. No, I have not. Mississippi had
22 the diploma privilege at the time I
23 graduated from law school.

1 Q. That means you get a J.D., you're a
2 lawyer; is that right?
3 A. If you graduate from an accredited
4 law school.
5 Q. Do you have to article with anyone
6 before you practice?
7 A. No.
8 (Off-the-record discussion.)
9 Q. (By Ms. Nial) I assume, therefore,
10 you have not taken the Multistate
11 Professional Responsibility Exam?

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12 A. I have not.

13 Q. Have you, in the last five years,

14 participated in the trial of any matter

15 before a court?

16 A. As a lawyer?

17 Q. As a lawyer.

18 A. No.

19 Q. Do you have any special expertise

20 in the area of product liability litigation?

21 MR. NEWBOLD: Object to the form of

22 the question -- "special expertise."

23 A. Well, I guess you're asking me have

1 I tried a case involving product liability

2 or --

3 Q. We could begin with that. Have you

4 ever tried a case --

5 A. No, I have not.

6 Q. Have you ever taught products

7 liability as a subject in law school?

8 A. No. I have not taught torts. It's

9 included in torts. I have not taught that.

10 Q. Is it your opinion that ethical

11 considerations differ in cases that involve

12 products liability?

13 A. As I understand the Code of

14 Professional Conduct, it applies across the

15 board.

16 Q. Is there any specialization in the

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17 state of Mississippi for an ethics expert?

18 A. I'm not aware of it, if it is.

19 Q. Do you know whether or not there's

20 any specialization in ethics in any state?

21 A. I'm not aware. There could be, but

22 I'm not aware of it.

23 Q. Do you keep up on all of the --

1 strike that. How do you keep up on the

2 current issues in legal ethics?

3 A. Well, first of all, I scan the

4 cases in the Southern Reporter, which are

5 the cases from Mississippi, Alabama, and

6 Florida. Then I try to keep up with the

7 Eleventh Circuit and Fifth Circuit

8 decisions.

9 I don't always get around to all of

10 them. But in the course of that sort of

11 reading, there are ethical problems.

12 Certainly attorney/client privilege problems

13 that arise from time to time.

14 Q. Are there particular ethical rules,

15 if you will, that have been continually

16 recognized over time?

17 A. I think, yes, there are certain

18 rules that prescribe what's right and what's

19 wrong that really haven't changed over time.

20 Q. Would one of those rules be that a

21 lawyer should not participate in assisting

22 his client to perpetrate a fraud?

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23 A. Well, the restatement -- not the

1 restatement, but the Rule 502 (d)(1), the
2 Crime Fraud Exception, is probably a
3 bringing forward of the common law rule.
4 It does specifically require that
5 the action be intentional and knowing on the
6 part of the client, which means the lawyer
7 could be innocent and acting in bona fide.
8 But the client could still violate that.
9 Q. So the lawyer, in order for the
10 crime exception -- Crime Fraud Exception --
11 to apply, need not know that the client is
12 abusing the lawyer/client relationship?
13 MR. NEWBOLD: Object to the -- I
14 think you just misstated his testimony.
15 Q. (By Ms. Nial) Let's try that again.
16 Must the lawyer know that the client is
17 seeking his advice for the purpose of
18 furthering a crime or a fraud?
19 MR. NEWBOLD: Your question is?
20 Q. (By Ms. Nial) Must the lawyer know
21 in order for the -- thank you. In order for
22 the Crime Fraud Exception to apply?
23 A. Well, let's look at the rule here,

1 quickly. Let's see what it says. The rule

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says simply, "There's no privilege if the services of the lawyer are sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud."

And then there is a comment -- let's see. Well, that isn't the comment that I was looking for. But based on the rule itself and its requirements, if the client had the knowledge -- he knew or reasonable person in his shoes would have known -- that the act to be performed was a crime or fraud, then I think the knowledge or intent of the lawyer would be immaterial.

Q. Thank you. Let's look at that definition, if you will, of the Crime Fraud Exception that's contained in 502 the Mississippi Rules of Evidence and break it down a bit, if you don't mind.

"To aid anyone to commit." Does that mean in your opinion -- I'm sorry.

Let's back up. "To aid anyone to commit or plan to commit." Does that language, in your opinion, indicate that the crime or fraud has to be successful?

MR. NEWBOLD: Object to the form of the question and the use of the word "successful."

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8 Q. Do you understand what I mean by
9 the use of the word "successful"?
10 A. I think I understand. Let me see
11 if I have the facts you're asking. First of
12 all, there is the employment of a lawyer by
13 a client.
14 Q. Correct.
15 A. And the client has the intent to
16 commit a crime or fraud.
17 Q. Correct.
18 A. And the lawyer provides services
19 which facilitate the commission of that.
20 Q. Correct.
21 A. And there is a plan to commit,
22 which doesn't reach fruition; is that -- am
23 I assuming that to be true also?

1 Q. That's correct.
2 MR. NEWBOLD: Does not reach
3 fruition?
4 MS. NIAL: Success.
5 A. There's no action upon it. I
6 think, then, that the Crime Fraud Exception
7 probably is not triggered.
8 Q. (By Ms. Nial) Not that there's no
9 action upon it, but it is not successful.
10 MR. NEWBOLD: Object to the form.
11 Let me ask you to restate an entire
12 question. This is becoming more of a nice

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13 conversation. But it's not really a
14 question and answer. So I object to the
15 form.
16 Q. (By Ms. Nial) Let us try again. By
17 the word "success," I mean that the crime or
18 fraud actually occurs. When I'm referring
19 to the fact that all that is necessary for
20 the Crime Fraud Exception to apply is that
21 the client is planning -- he knowingly is
22 planning to commit a crime or fraud.
23 What I mean by that is that the

1 crime or fraud being planned by the client
2 is not successful. It does not occur.
3 Although that is, in fact, what the client
4 was planning.
5 In that case, does the Crime Fraud
6 Exception apply to the advice the lawyer
7 gave the client?
8 A. It is my understanding that the
9 lawyer should -- he has a duty to give the
10 client advice, which includes various
11 options which the client may accept or
12 reject. Unless the client acts upon one,
13 which is fraudulent in nature or criminal in
14 nature, then I would think not.
15 Q. So what meaning does the phrase "or
16 plan to commit" have in that rule?
17 A. Well, as I read the rule, it says
18 simply, "To enable or aid anyone to plan to

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commit," which is to put in effect the planning. Once again, there has to be action on the part of the client.

Does the client follow through on the advice and develop a plan and seek to

implement it or not? If it isn't acted on in that sense, I would say there's no triggering of the exception.

Q. But if he acts on it to forward his plan -- if the client acts on the advice provided by the lawyer in order to put together his plan, but the plan is not successful, does the Crime Fraud Exception apply to the advice that the lawyer gave the client?

MR. NEWBOLD: I object to the form. Are we using the definition of successful that you gave two questions back?

MS. NIAL: Yes.

MR. NEWBOLD: Then let's hear that definition.

MS. NIAL: We will continue to use the definition that I previously provided, which means that the fraud is successful -- the fraud actually defrauds someone. But in this case, it's not successful. Do I need to repeat the question for you, Mr. Newbold?

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Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

1 MR. NEWBOLD: Yes, you do.

2 Q. (By Ms. Nial) The client goes to

3 the lawyer and asks for advice which he

4 knows he wants to use in order to plan to

5 commit a fraud. The lawyer gives him the

6 advice. He uses it in his plan to commit a

7 fraud.

8 The fraud is not successful, i.e.

9 it does not defraud anyone. It is an

10 attempt to defraud. Would the exception to

11 the lawyer/client privilege -- the Crime

12 Fraud Exception -- apply to that advice

13 given by the lawyer?

14 A. Let me ask one assumption you're

15 asking me to rely upon. And that is after

16 the lawyer gives the advice to the client,

17 the client in fact acts upon that, makes a

18 decision to follow a particular option which

19 might lead to a crime or fraud.

20 The client acts upon it, attempts

21 to implement it, but the scheme fails or

22 whatever you wish to call it. In that

23 event, there has been action by the client

1 in response to whatever advice the lawyer

2 might have given.

3 And there, where there is action by

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

4 the client, then I would think the exception
5 is triggered. But if the client does not
6 accept the advice of the lawyer for whatever
7 reason, then I think there is no triggering
8 of the exception.
9 Q. The kind of litigation in which we
10 are involved in this lawsuit is publicly
11 or -- I guess you might -- yeah, publicly
12 known as smoking and health litigation. Are
13 you aware of that sort of off-the-cuff term?
14 A. I'm aware various labels apply to
15 it in the press stories.
16 Q. Do you, yourself, hold any opinions
17 regarding the hazards associated with
18 cigarette smoking?
19 A. Can you be more specific? What
20 sorts of --
21 Q. Do you believe that cigarette
22 smoking causes cancer?
23 A. I don't know.

1 Q. Do you believe that cigarette
2 smoking is addictive?
3 A. Is addictive? I do not know.
4 Q. Have you read any medical articles
5 dealing with the causal connection, if there
6 is one, between cigarette smoking and
7 cancer?
8 A. By medical article, you mean one

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

authored by a medical doctor and published?

Q. Or a medical researcher.

A. No, I have not.

Q. When you were being interviewed, if I can use that term in reference to your meetings tobacco lawyers, did they ask you about your personal opinions regarding cigarette smoking and health?

A. I think they probably did. I don't recall which meeting it was.

Q. Did they provide you with any information relating to the tobacco industry's position regarding the relationship between cigarette smoking and health?

A. They provided me the materials that are on that review list, some of which indicated that position.

Q. In your opinion, if a manufacturer is aware of the hazards relating to the use of its product, does it have a duty to disclose the information it has regarding the health effects of its product?

MR. NEWBOLD: Object to the form of the question -- the use of the word "duty."

Q. (By Ms. Nial) Do you understand what I mean by "duty"?

A. I understand what you're saying. I don't think it has a duty.

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

15 Q. If asked a direct question, does a
16 manufacturer of a product who is a aware of
17 a hazard associated with the use of its
18 product -- I should back up and say if asked
19 a direct question regarding the hazards that
20 may be associated with the use of its
21 product, is a manufacturer that knows of the
22 hazards associated with the use of its
23 product required to disclose that

1 information?
2 MR. NEWBOLD: Objection to the form
3 of the question. Asked by whom?
4 Q. (By Ms. Nial) Please answer the
5 question.
6 A. You're asking -- I assume you're
7 asking for a personal opinion from me --
8 Q. Yes.
9 A. -- as to that. And again, my
10 answer, I think, would be there is no duty
11 to disclose it.
12 Q. If a manufacturer promises publicly
13 to the public that it will disclose any
14 hazards associated with the use of its
15 products that it discovers through medical
16 research, does it have a duty to disclose
17 that information?
18 MR. NEWBOLD: Object to the form of
19 the question -- the word "promise."

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Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

20 Q. (By Ms. Nial) Do you understand
21 what the word "promise" means?
22 A. I understand what it means. And I
23 think you're referring to the Frank

1 Statement, as it's generally called.
2 Q. Well, first I'd like to ask you
3 generally.
4 A. Well, I would have to know what the
5 term "promise" means in the context in which
6 you're using the question.
7 Q. So you can't answer it? You can't
8 answer my question generally? You need more
9 specifics; is that correct?
10 A. Right. I don't know what the
11 nature of the promise would be and how it is
12 expressed.
13 Q. Have you reviewed the Frank
14 Statement?
15 A. I have.
16 Q. In your opinion, is the Frank
17 Statement a promise to the public to provide
18 information relating to the use of
19 cigarettes?
20 A. No, it is not.
21 Q. Assume, if you will, that the
22 cigarette manufacturers did make such a
23 promise to the public and then did not

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fulfill that promise. Would they be violating some duty?

MR. NEWBOLD: Object to the form of the question.

A. I do not think they would be violating any duty.

Q. (By Ms. Nial) Have you ever smoked?

A. Yes.

Q. Have you quit?

A. Yes.

Q. Why did you quit?

A. Well, this was a long time ago; and I didn't have a lot of money; and it got expensive.

Q. You weren't concerned about any health effects of cigarette smoking?

A. Oh, I suppose I was to a certain extent.

Q. What health effects were you concerned about?

A. Well, I had developed a hacking cough, which I found troublesome.

Q. When you quit smoking, did you have

any difficulty quitting?

A. No.

Q. What was the age at which you began smoking?

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5 A. I started when I was in law
6 school. Probably the first year in law
7 school. So I would have been about 21.
8 Q. And you stopped when?
9 A. Well, I smoked for, maybe, two
10 years. I did not smoke for a while after I
11 graduated from law school. And then a few
12 years later, when I became District
13 Attorney, I started smoking again but quit
14 after about eight months.
15 Q. Do you know why you started
16 smoking?
17 A. I think because of the stress of
18 law school, studying, and other law students
19 smoking.
20 Q. Were you aware that there was
21 nicotine in the cigarette smoke that you
22 were ingesting?
23 A. I was aware of that.

1 Q. Were you aware that the nicotine
2 had a pharmacological impact on you?
3 A. No.
4 MR. NEWBOLD: Object to the form of
5 the question.
6 A. You're asking me to assume that it
7 does have and this is established.
8 Q. (By Ms. Nial) No. I asked if you
9 were aware --
10 A. But you're asking me to assume that

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
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11 it does have a pharmacological effect.

12 Q. No. I'm asking you were aware that

13 there was a pharmacological effect.

14 A. Well, assuming that there was a

15 pharmacological effect, I wasn't aware of

16 it.

17 Q. And as you sit here, you're not

18 aware of any pharmacological effect that

19 cigarette smoking or the nicotine in

20 cigarette smoke may have on any human being?

21 A. That is correct.

22 Q. And you are not aware of any

23 disease that may be related to cigarette

1 smoking?

2 A. If you're asking am I aware of the

3 controversy; that is, that there are those

4 who say there is such an effect and there

5 are those who say it isn't proven. I'm

6 aware of the controversy. Personally, I do

7 not have the expertise to determine that

8 there is or is not.

9 Q. Do you think there are persons who

10 have that expertise?

11 A. I'm sure. At least I hope there

12 are.

13 Q. And who might those persons be?

14 A. Well, I think they are research

15 scientists who are trained in the field who

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16 can identify carcinogens. And assuming that
17 it can be established to a reasonable
18 scientific certainty, then I would say that
19 they may be qualified to do that.
20 Now, I am not aware personally that
21 that has ever been established. So I guess
22 the best answer is I'm not aware.
23 Q. When you met with Mr. Newbold and

1 Mr. Randles -- I believe you met with them
2 twice together.
3 A. In early March and then again
4 yesterday.
5 Q. So that's three times. Did
6 Mr. Newbold or Mr. Randles discuss with you
7 the not proven concept that you've just
8 discussed relating to cigarette smoking and
9 ill health?
10 A. I don't recall specifically. I
11 think, perhaps, it could have been
12 discussed. It also could be reflected in
13 some of these materials.
14 Q. Have you always believed that the
15 relationship between cigarette smoking and
16 ill health had not been proven?
17 MR. NEWBOLD: Object. I think you
18 misstated his prior testimony. I think he
19 said he didn't know.
20 Q. (By Ms. Nial) Do you believe --
21 A. Would you ask the question again?

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I got confused.

Q. Sure. I believe you did use the

term, just in the last answer or previous answer -- the term "not proven." Do you recall using that term?

A. Yes, I do.

Q. Have you always used that term in reference to the causal relationship between cigarette smoking and ill health?

A. The answer to that would be no. Because I haven't really used that or expressed any views about it until I began thinking about this. And then I became aware of the fact that this is an open question. It is a controversy. And certain things are not proven.

Q. You've only reviewed the internal documents from tobacco industry -- from the tobacco industry which were attached to a variety of pleadings made by plaintiffs; is that correct?

A. I've reviewed those that are on the list of materials reviewed. Now whether they were attached, I don't know.

Q. But you haven't reviewed any other

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1 internal industry documents?

2 A. No.

3 Q. I have a document that I'd like to

4 talk to you a little bit about, which I

5 assume you have not reviewed.

6 (Plaintiff's Exhibit No. 8 was

7 marked for identification. A

8 copy is attached.)

9 (Mr. Newbold reviews document.)

10 MS. NIAL: Counsel, can I ask

11 questions? Or are you still reviewing it?

12 MR. NEWBOLD: Well, I think that you

13 can ask questions subject to the statement

14 that I read at the beginning of the

15 deposition pertaining to privileged or

16 confidential documents.

17 But I will tell you that just by

18 looking at it, because of the multitude of

19 documents, I don't always recognize every

20 one. But to the extent that this may be

21 privileged or confidential, I would ask that

22 it fall under the rubric of the paragraph

23 that I read at the beginning of the

1 deposition.

2 MS. NIAL: And you, of course,

3 understand that we don't believe that this

4 is privileged or confidential. We don't

5 believe it falls under that rubric.

6 Q. Now that we've said that for the

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7 record, Professor Williams, have you seen
8 this document before that's before you --
9 A. No, ma'am.
10 Q. -- that's been identified as
11 Exhibit 8? Of course, if you would like to
12 read the entire document before I question
13 you about it, please feel free to do so. But
14 I will tell you that there is only one page,
15 page 13, and a very small section of that
16 page that I want to ask you about.
17 A. Before answering the question, I
18 would like to read it in its entirety. But
19 also I'm concerned about the legend in the
20 margin which says, "This document and its
21 contents are subject to a court order and
22 shall not be used, shown, or distributed
23 except as provided in the court's order." I

1 certainly don't want to do anything that
2 would violate that order.
3 Q. I think Mr. Newbold has taken care
4 of that for you.
5 A. Then, may I have some time to read
6 this?
7 Q. Of course. Please feel free.
8 (Deponent reviews document.)
9 Q. Mr. Williams, have you had an
10 opportunity to review the document?
11 A. I have. And could you help me

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identify the author, Alan Rodgman?

Q. I'll do what I can. Mr. Rodgman was a scientist who worked for one of the tobacco companies. I believe it was Philip Morris, but I could be corrected on that.

A. He was not a lawyer?

Q. He was not a lawyer?

A. And to whom was this directed?

Q. Apparently, this was a report that he did on a regular basis. Not to lawyers, I believe. As you can see, there are previous reports listed.

And he says in the article himself that this is a report -- "This report is an extension of a companion memorandum which presented my position as briefly and as concisely as possible."

And I believe that he's sending it to members of the company's research department. And I'm basing all of that on language within the document itself.

A. Okay.

Q. And if you'd turn to page 13.

MR. RANDLES: Just in the interest of clarity, and I'm not positive of this. I think Rodgman worked for Reynolds, but I'm not positive.

MS. NIAL: I'm sorry. I'm not positive either. And there's no information

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18 on the document, that I can tell, to
19 indicate whether or not he was with Reynolds
20 or Philip Morris. One of the two big guys.
21 Q. (By Ms. Nial) Down at almost the
22 bottom of the page, there is a statement by
23 Mr. Rodgman.

1 He says, "This raises an
2 interesting question about the former
3 compounds. If a tobacco company plead not
4 guilty or not proven to the charge that
5 cigarette smoke (or one of its constituents)
6 is an etiological factor in the causation of
7 lung cancer or some other disease, can the
8 company justifiably assume the position that
9 publication of data pertaining to cigarette
10 smoke composition or physiological
11 properties should be withheld because such
12 data might affect adversely the company's
13 economic status when the company has already
14 implied in its plead that no such etiologic
15 effect exists." Did I read that correctly?
16 A. You did read that correctly.
17 Q. Do you have an answer for
18 Mr. Rodgman?
19 A. Well, first of all, I would need to
20 know more facts that you're asking me to
21 assume. One would be: Is this simply a
22 report which doesn't go beyond the

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department where it is reported? Do you

know that.

Q. No. I don't know the answer to that question. But how -- if you could illuminate for me, how is that information relevant to giving an answer to whether or not a company in the position of the company Mr. Rodgman has described in this section justify withholding the publication of data pertaining to cigarette smoke composition?

MR. NEWBOLD: Object to the form of the question.

A. Because you obviously are going to ask me to assume that such nonpublication was, in fact, acted on.

Q. (By Ms. Nial) No. Not for the purpose --

A. Otherwise, the question has no meaning.

Q. First of all, not for the purpose of the question that I've asked you. I've asked you to tell me what you think the answer to this question is.

Can, in fact, the company

justifiably assume the position that, "Publication of data pertaining to

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cigarette smoke composition or physiological properties should be withheld because such data might affect adversely the company's economic status when the company has already implied in its plea that no such etiologic effect exists"?

A. Well, in order to answer that question, I need to know a few other facts. First of all, I note that the author qualifies what he has just said in the next sentence.

"It is not my intent to suggest that this company accept cigarette smoke-health data at face value." And then he goes on to say this other can be done.

And this is, as I view it, simply a report to a superior. And I would need to know whether or not it was acted upon in order to know whether his question here has any meaning or sense to it.

Q. Let me refer you, then, for further

information according to that question, to the material that proceeds that question. It says -- that's on the same page, page 13, "Members of this research department have studied in detail cigarette smoke composition." And it gives citations.

"Some of the findings have been

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published." It gives citations. "However, much data remain unpublished because they are concerned with carcinogenic or cocarcinogenic compounds or with patentable material." Then he goes on to ask his question?

A. Well, certainly that which deals with patentable material is -- the company there should have a policy of nonpublication; because it would be disclosing internal company secrets, composition of the tobacco, or whatever.

I do not know to what extent all of them are infected with patentable material and thus, subject to nonpublication.

Q. Well, the language seems to

imply -- and I'll ask you to read along with me -- "Much data remains unpublished because they are concerned with carcinogenic or cocarcinogenic compounds." Then he provides the citations. "Or with patentable material," for which he provides two citations.

Now, perhaps it's me, but as I read that section, those citations to carcinogenic and cocarcinogenic compounds seem to be distinguished by the structure of that sentence from those materials that contain patentable material. Do you disagree

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14 with that?

15 MR. NEWBOLD: I object to the form

16 of the question. It clearly calls for

17 speculation because you say "it seems to

18 imply." By the virtue of the question

19 itself, it calls for speculation. I object

20 to the form.

21 MS. NIAL: Whatever.

22 Q. (By Ms. Nial) As you read that

23 sentence which begins with "however," do you

1 not see a distinction between the material

2 that is concerned with carcinogenic or

3 cocarcinogenic compounds and the material

4 that is patentable?

5 A. It is in the disjunctive, and that

6 does imply that there is a distinction

7 between the two.

8 Q. Now, as to the material dealing

9 with carcinogenic and cocarcinogenic

10 compounds, does Mr. Rodgman not say that

11 much data remains unpublished?

12 A. As of the date of that report, he

13 says that. But --

14 MR. NEWBOLD: Just answer the

15 question.

16 Q. (By Ms. Nial) So do you still take

17 the position that the question that he asks

18 is asked in a -- although you did not use

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19 this term -- a factual vacuum?

20 MR. NEWBOLD: Object to the form of

21 the question.

22 A. Well, I don't know whether you'd

23 characterize it as being asked in a factual

1 vacuum or simply as a rhetorical question.

2 I don't think there is anything

3 that leads to a conclusion that that

4 condition of nonpublication continued after

5 the date of this report, which I think is

6 very significant.

7 Q. (By Ms. Nial) If that condition of

8 nonpublication did continue after the date

9 of this report, would that make a difference

10 as to whether or not the company could

11 assume the position that Mr. Rodgman is

12 discussing in that section that we just

13 read?

14 MR. NEWBOLD: Are you asking him to

15 make that assumption as part of your

16 hypothetical?

17 MS. NIAL: Yes.

18 A. You're asking me to assume that

19 these reports --

20 Q. Were not published.

21 A. -- were not published?

22 Q. Correct.

23 A. And the question is --

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Q. If you make that assumption that they were not published, does that make a difference as to whether or not the company can "justifiably assume the position that the publication of data pertaining to cigarette smoke composition or physiological properties should be withheld because such data might affect adversely the company's economic status when the company has already implied in its plea that no such etiologic effect exists"?

A. Well, what you're asking me, really, is a question of business ethics, an area in which I don't profess any expertise. And I just will have to answer the question I don't know.

MR. NEWBOLD: Would this be a good time to take a lunch break?

MS. NIAL: It would.

(Lunch break.)

Q. (By Ms. Nial) Mr. Williams, have a nice lunch?

A. Yes, we did.

Q. Did you go to out to lunch with tobacco lawyers?

A. With who?

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4 Q. Mr. Newbold?

5 A. No, I did not.

6 Q. Who did you go out to lunch with?

7 A. With Mr. Ferris and Mr. Randles.

8 Q. Did you and the lawyers that you

9 went out to lunch with talk about your

10 testimony at all this morning?

11 A. We talked about one matter that,

12 perhaps, was not as clear as should be in

13 order to state my position on it.

14 Q. And what was that matter?

15 A. It was a matter relating to the

16 setting up of a process. As you asked the

17 question, it was a process for lawyers

18 receiving documents for the purpose of

19 putting a screen or protective shield of

20 privilege over documents that would not

21 otherwise qualify for the privilege.

22 Q. What did they tell you was wrong

23 with your answer?

1 A. It was somewhat ambiguous. And

2 therefore, I think I need to state again

3 what my opinion about that is. That if the

4 process is set up to deal with instruments

5 that are legitimately subject to the

6 privilege, then it's a valid process; and

7 the lawyer doesn't commit any ethical

8 transgression.

9 Q. However, if the lawyer sets up the

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10 process to create a privilege --

11 A. For documents that are not

12 otherwise privileged.

13 Q. Otherwise privileged --

14 A. Right. And he does so knowingly

15 and with the intent to accomplish that end,

16 then my answer that I gave this morning

17 would be in order. And that is that that

18 process would be improper.

19 Q. Thank you. You mentioned earlier

20 today that you had some grandchildren.

21 Grandchildren age from 11 months to 11

22 years; is that correct?

23 A. That's correct.

1 Q. Would you have any problem with the

2 11-year-old smoking?

3 A. I would be very disappointed and

4 unhappy about it, yes.

5 Q. And why would you be disappointed

6 and unhappy?

7 A. Because first of all, this is a

8 little girl. And I would be less than happy

9 if she began smoking for several reasons.

10 One of which would be that I think it's a

11 messy darn habit and one that she ought not

12 take up.

13 And secondly, I would be concerned

14 because of the controversy that exists that

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perhaps she might be assuming a health risk.

Q. Would you be concerned if you became aware that the tobacco industry was targeting your 11-year-old granddaughter for the sale of tobacco products?

A. Well, I'd have to know more about that. What are you asking me to assume? Targeting in what way?

Q. Let me try to give you some facts.

Do you read the New York Times at all?

A. Occasionally.

Q. Do you read the Wall Street Journal?

A. Occasionally.

Q. Have you read in recent weeks about the Liggett settlement of 22 Attorneys' General cases?

A. I have.

Q. Did you happen to notice in your reading regarding the Liggett settlement that the Chairman/CEO of Liggett issued a public statement?

A. I don't recall that specifically, but it probably was in the article.

Q. Are you aware that Mr. Lebow, who is the Chairman and CEO of Liggett, admitted that the tobacco industry was targeting children in their advertising?

MR. NEWBOLD: Objection to the form

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21 of the question and the use of the word

22 "admitted."

23 A. I'm not aware of that. I did not

1 pick that up from reading that.

2 Q. If a Chairman and CEO of a tobacco

3 company stated that the tobacco industry

4 targeted children in their advertising,

5 would that cause you any concern?

6 A. First of all, this would -- you're

7 asking me to assume that the advertisements

8 of that company would be focussed on

9 children under the age of -- what? 18?

10 Q. 18.

11 A. In an effort -- you're asking me to

12 assume further that this is an effort to

13 encourage those children to begin smoking?

14 Q. Correct, sir.

15 A. Well, I guess my answer would be I

16 would be unhappy about it, yes.

17 Q. Would you think they should be made

18 to stop targeting children?

19 A. Well, I might have a certain animus

20 in that direction; but I don't know that

21 they are under any duty not to advertise to

22 that group.

23 Q. Do you know any state in which it

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is legal to sell cigarettes to minors under 18?

A. I'm not aware of any.

Q. If selling cigarettes to minors under 18 is illegal, in your opinion, is there something wrong with targeting advertising to that segment of the population?

MR. NEWBOLD: Objection to the form of the question. Wrong in what sense?

Q. (By Ms. Nial) Do you understand what I mean by "wrong"?

A. Would you ask the question again?

Q. If it is illegal to sell tobacco products to minors under the age of 18, would it be wrong for a cigarette company -- tobacco company -- to target that segment of the population?

A. By "wrong," do you mean a criminal act? Or morally wrong? What do you mean?

Q. Would it be a criminal act?

A. No. It would not be a criminal act.

Q. Would it be morally wrong?

A. And I'm not prepared to say that it would be morally wrong.

Q. Would it be ethically wrong?

MR. NEWBOLD: Objection to the form

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
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6 of the question. Which code of ethics are
7 we talking about?
8 Q. (By Ms. Nial) Would it be ethically
9 wrong, sir?
10 A. There you're dealing with, once
11 again, business ethics; and I simply don't
12 know.
13 Q. Assume for me, sir, that the
14 tobacco industry had entered into a
15 voluntary code which forbad the advertising
16 of cigarette or tobacco products to minors.
17 Would that make a difference to
18 your opinion that you do not know whether or
19 not it is unethical to target minors in
20 cigarette or tobacco advertising?
21 A. Well, the assumption is that the
22 tobacco industry, the several companies,
23 voluntarily enter into, you say, a code or

1 an agreement not to --
2 Q. Target minors in their advertising.
3 A. -- target minors in their
4 advertising. And then assume further that
5 they breach this agreement and publish these
6 advertisements.
7 Q. Correct.
8 A. And your question to me is: Is
9 that wrong in a business ethic sense?
10 Q. Is it wrong in a -- well, we'll go

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

11 through the list -- in a moral sense?

12 MR. NEWBOLD: Well, I object to the

13 form of the question. I don't think I

14 endorsed him as a priest or a rabbi.

15 A. Well, I'm neither of those. And I

16 simply don't know the answer to that.

17 Q. (By Ms. Nial) In an ethical sense,

18 sir, would that be wrong to breach in your

19 own voluntary code of ethics which you

20 publicized?

21 A. I don't think I have the knowledge

22 or expertise to answer that.

23 Q. So how would one determine whether

1 a cigarette company who targeted minors in

2 its advertising -- strike that. How would

3 we determine whether or not the conduct of a

4 cigarette company in targeting its

5 advertising to minors was appropriate or

6 not?

7 MR. NEWBOLD: I'm going to object to

8 the form of the question. Because minors

9 could be under 21. Or minors could be under

10 18. Which minors are you talking about.

11 Q. (By Ms. Nial) The minors that we

12 have been talking about, sir, that were

13 under 18.

14 A. Under 18. The answer is I don't

15 know how you would set up a test for that.

16 Q. Let's talk a little bit more about

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17 the Liggett settlement. Are you aware that
18 as a part of the Liggett settlement the
19 Liggett company has agreed to turn over
20 certain categories of documents that are
21 subject to Liggett's attorney/client
22 privilege and waive that privilege?
23 A. I believe the news articles I read

1 alluded to that, yes.
2 Q. Do you think there is anything
3 improper about Liggett waiving its
4 attorney/client privilege and turning
5 documents over to the Attorneys General as a
6 result of a settlement agreement?
7 MR. NEWBOLD: I object to the form
8 of the question.
9 A. This would be an independent act by
10 one of several defendants with common
11 interests. And I believe that whereas that
12 individual company might be able to waive as
13 to internal documents that affected only
14 that company, if there is any external
15 effect as to the other common interest
16 parties, I would say no, it's not proper.
17 Q. So let me understand. Liggett
18 cannot waive its own attorney/client
19 privilege to documents which are only
20 covered by an attorney/client privilege that
21 belongs to Liggett?

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22 MR. NEWBOLD: Objection. You

23 misstated his testimony.

1 A. What I said was that Liggett, the

2 client, it seems to me, could properly waive

3 the privilege as to documents which were

4 internal and affected only its interest, if

5 there are any such documents. But documents

6 which have any external effect as to other

7 common interest parties, I would say no.

8 Q. Is that so even if the document --

9 let's say document A -- has never been

10 shared with anybody within that common

11 interest group?

12 Has never been discussed with

13 anybody in that common interest group?

14 There is no reason for any member of that

15 common interest group to even know that that

16 document exists?

17 A. Well, I think it also -- one has to

18 know what the contents of the document is or

19 are before I could answer that question.

20 Q. So let's posit a document. Not a

21 document. But let's posit a hypothetical

22 document wherein Liggett discusses the fact

23 that it is its opinion, based on its own

1 internal review that the tobacco companies

http://legacy.library.ucsf.edu/tid/dhq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

2 should be held liable for cigarette-related
3 diseases?
4 MR. NEWBOLD: When that thing went
5 off, I lost my train of thought. (To the
6 court reporter) Could you just read it back?
7 I'm not objecting to it. I just want to hear
8 it.
9 (Court Reporter reads back.)
10 Q. (By Ms. Nial) Would that document
11 be subject to a joint defense privilege, in
12 your opinion?
13 A. This is a document which imputes
14 liability to all of the common defendants;
15 is that correct?
16 Q. It says that it, based on its own
17 review, it believes that cigarette companies
18 should be held liable for cigarette-related
19 diseases.
20 A. Well, I would think that where the
21 contents of the documents affect the common
22 defendants or common parties to the action,
23 that one party may not properly waive and

1 release that.
2 Q. Is it enough that the contents of
3 the document affect a member of the common
4 interest group? Or did the documents have
5 to be either based on or be documents that
6 were actually shared between members of the

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Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

common interest group?

MR. NEWBOLD: Objection to the form. Compound.

A. Well, clearly if they're shared with the common interest parties, I don't think that one of the parties could waive. And your question earlier was based on that assumption, as I understood it.

Q. No. No. This was a document that was purely Liggett. Not shared with any joint interest or common interest group members, assuming that such a group exists. Not based on any information obtained from the common interest group members. Based purely on a review of Liggett only information.

MR. NEWBOLD: Question, please.

Q. (By Ms. Nial) Is that document covered by the joint defense privilege?

A. I would say yes, if the contents implicate the other common defendants.

Q. So you would throw it broadly enough so that if any of the common interest defendants were discussed in a document drafted by Liggett and/or Liggett's lawyers, based only on Liggett information, never shared with any of the common interest group members, if such a group existed, would be covered by the attorney/client privilege?

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13 A. Yes.

14 Q. I'm sorry. The joint defense

15 privilege. Are you aware of any case law

16 that indicates that when members of a joint

17 defense group or a common interest group

18 become adverse that the materials are

19 documents that were once covered by the

20 joint defense privilege are no longer

21 privileged as to the members of that joint

22 defense group?

23 A. I am not.

1 Q. Would you be surprised to learn

2 that there was such a case; and that it

3 was -- that opinion was issued by a Federal

4 District Court in Mississippi?

5 In amongst the documents we were

6 given that you have reviewed in preparation

7 for your testimony here today is a group of

8 documents -- is a group of cases. I think

9 you mentioned that you had seen this group

10 of cases.

11 (Deponent reviews document.)

12 A. Yes. I think that's the group.

13 Q. And in that group of cases provided

14 at pages PHWO2195916 is a list of the cases

15 contained in this package.

16 A. Uh-huh.

17 Q. Do you agree that this is such a

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18 list?

19 A. Yes. It seems to be.

20 Q. Do you recall viewing these cases?

21 A. Yes. I recall reading those cases

22 back in January and February.

23 Q. Are you familiar with the case of

1 Exxon versus Crosby, Mississippi Resources

2 Limited?

3 A. May I see that for a minute?

4 Q. Sure. Of course. No problem.

5 There you go.

6 (Hands document.)

7 A. Okay.

8 MR. NEWBOLD: Take as much time as

9 you need to review the case.

10 Q. Yeah. I wasn't going to suggest

11 that you ignore the rest of the case, but

12 the discussion that I'm talking about is on

13 page 5. But please review the whole case.

14 (Deponent reviews document.)

15 Q. Mr. Williams, I wonder if you noted

16 the section discussing the common interest

17 privilege on page 5?

18 A. I did.

19 Q. Did you note the section to which I

20 was referring, which reads, "In that

21 situation, communication is made to a shared

22 attorney to establish a joint strategy

23 remain privileges against the rest of the

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world."

"The client may not, however, later assert the privilege against each other" -- meaning each other partied -- "after their interests have become adverse." Did I read that correctly?

A. You did read that correctly.

Q. Do you think that, generally, that is the law in reference to joint defense privilege?

A. Well, there is another part of it. And this part that you read is slightly out of context. In the total context, the language relates to information which has been placed in issue by the joint party, which is seeking to waive that.

Q. Sure.

A. And in this case, it was placed in issue when Exxon filed a lawsuit. In the context of this case, the court finds that by filing this suit, Exxon has placed in issue many areas which might otherwise be protected by the attorney/client privilege.

And then this other comes into play. In that situation, communication is

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3 made to the shared attorney, etc.

4 Q. So where the parties to a joint

5 defense privilege, if we can use that term

6 for the purposes of this question, become

7 adverse as a result of a lawsuit related to

8 the information contained in the documents

9 that would be subject to the joint defense

10 privilege.

11 That joint defense privilege does

12 not avail against the parties in that joint

13 defense group that have now become adverse?

14 A. Well, I need some explanation

15 guidance from you now. You're asking me to

16 assume -- you said a lawsuit. Now, what am

17 I to assume there?

18 Q. That the lawsuit between the two

19 members of the joint defense group, if such

20 a group exists --

21 A. There would be a lawsuit between

22 Liggett --

23 MR. NEWBOLD: Let her finish.

1 Q. (By Ms. Nial) Either between

2 Liggett and someone else that Liggett

3 brought. But more likely between another

4 member of the joint defense group against

5 Liggett.

6 A. All right. Assuming that the

7 information is placed in issue in such a

8 fashion, then this language seems to

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9 represent the general rule on that.

10 Q. I wonder if we could talk a little

11 bit about the lawyer/client privilege

12 generally. Not in reference to tobacco

13 litigation, but just generally.

14 Is everything -- every

15 communication -- not everything. Is every

16 communication between a lawyer and his

17 client subject to the attorney/client

18 privilege?

19 A. No.

20 Q. If a lawyer is offering purely

21 business advice to the client, is that

22 covered by the attorney/client privilege?

23 A. No, it is not.

1 Q. If a lawyer simply attends a

2 meeting -- is there for no other purpose

3 than to attend it -- would the minutes of

4 that meeting be automatically covered by an

5 attorney/client privilege?

6 A. I think the lawyer would have to

7 be -- excuse me.

8 MR. NEWBOLD: I was thinking about

9 that question. Go ahead.

10 A. I think the lawyer would have to be

11 present in the role of counsel giving advice

12 to the body.

13 Q. (By Ms. Nial) If he just sat

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14 there --

15 A. As an observer?

16 Q. As an observer.

17 MR. NEWBOLD: Object to the form of

18 the question. This colloquy going back and

19 forth, I object to it. Let's have a

20 complete question, please.

21 A. Would you ask it again, because I

22 got a little off track?

23 Q. No problem. If the lawyer is at

1 the meeting simply to be an observer, would

2 the minutes of the meeting be privileged?

3 A. If the lawyer's present for some

4 legal consultation purpose -- to review, to

5 comment upon, or to otherwise provide advice

6 to the business of the meeting -- whatever

7 it might be -- the board -- then clearly I

8 think he is involved as legal counsel and a

9 privilege would attach.

10 Now, you are assuming or asking me

11 to assume that this lawyer is retained by

12 the organization whose meeting is underway?

13 Q. He's either retained or he's simply

14 invited as a guest. Would it make a

15 difference if he was retained by the

16 organization as to whether or not the

17 minutes would just, as a general rule, be

18 given to privilege?

19 A. If he's a retained attorney

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20 representing the group and is present, I
21 think a very strong argument could be made
22 that the privilege would protect the
23 minutes. If he is in the status of nothing

1 more than a guest, I think you would have
2 more difficulty making an argument.
3 Q. What if the meeting included,
4 beside the so-called retained attorney of
5 the group, persons who were not members of
6 the group but rather invited guests?
7 MR. NEWBOLD: Object to the form of
8 the question. It's not a complete
9 question.
10 A. I'm not quite sure I understand
11 what you're asking.
12 Q. (By Ms. Nial) Would that make a
13 difference to your opinion as to whether or
14 not the minutes would be privileged if the
15 lawyer, retained by the organization, was at
16 a meeting at which nonmembers had been
17 invited as guests?
18 A. Well, the basis of the privilege is
19 that the communications are confidential
20 between lawyer and client or representatives
21 of each.
22 And that, of course, it would be
23 sought in the guise or nature of legal

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1 advice. If there are other persons present
2 who are representatives or one of the other,
3 then the privilege would still be in effect.
4 Q. But if they were not
5 representatives of one or the other, as you
6 describe it, would the privilege still
7 attach?
8 A. Are you asking me to assume that
9 the other persons present have no
10 relationship to the entity whose board is
11 meeting?
12 Q. That's correct.
13 A. They have no relationship?
14 Q. No relationship to the lawyer
15 either?
16 A. They are purely third party guests
17 who are present?
18 Q. Invited guests. And my question to
19 you is based on those facts that we've just
20 gone through, would the minutes be
21 privileged?
22 A. Well, it would Boyle down there to
23 a question of confidentiality. Is it the

1 intent of the discussions in that meeting to
2 include these persons within the
3 confidential shield and involve them in some
4 way in the conversations and decisions?

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5 If so, an argument could be made
6 that the privilege attains. If not, then
7 arguably, you can have a difficult time
8 establishing that.
9 Q. Help me out here. If you have an
10 invited third-party guest at a meeting --
11 not there to help the lawyer -- not a member
12 of the board -- an invited third party
13 guest. And you want him to be a part of
14 this privileged group, do you have to tell
15 him that he's part of the privileged group
16 in order for the privilege to attach?
17 A. I think there has to be some
18 relationship established either as an
19 advisor or consultant or whatever it might
20 be, which would bring that person under the
21 language representative of the party or
22 representative of the lawyer, which the rule
23 requires.

1 Q. So if I'm understanding you
2 correctly, that person would have to know
3 that he was being brought into this group.
4 He couldn't just find out later that he was
5 brought into that group and then the
6 privilege attach. Do you get my meaning?
7 A. I understand what you're asking,
8 yes. Well, I think in order for a
9 relationship to be established which would

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10 make that person a representative or one of
11 the groups present, either the lawyer or the
12 entity, clearly there would have to be some
13 understanding. It would have to be of a
14 knowing presence there in the room.
15 Q. If a client gives a lawyer a piece
16 of information which the client and the
17 lawyer both intend for the public to see, is
18 that information between the client and the
19 lawyer privileged?
20 A. It may be.
21 Q. If a lawyer puts together materials
22 to respond to a legitimate discovery request
23 and shows them to his client, is that

1 material at that stage privileged?
2 A. Let me understand the question.
3 The lawyer is responding to a notice to
4 disclose or produce?
5 Q. Correct.
6 A. And he assembles materials which
7 are requested, and he then shares that with
8 the client?
9 Q. Correct.
10 A. And you asked further, then, what
11 you -- ask me the question now. I've lost
12 the train of it.
13 Q. A lawyer obtains a discovery
14 request. He quite properly, we hope, tries
15 to respond to that discovery request. He

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16 collects the materials, and he goes to his
17 client.
18 And he says, "These are the
19 materials I'm going to give in response to
20 this discovery request." The client looks
21 them over. At that point, are those
22 materials privileged?
23 A. If the client and the lawyer share

1 ideas about the documents, the nature of
2 them, the content, and so forth, there could
3 be an exchange of information which would be
4 confidential in nature and trigger the
5 privilege.
6 Q. That's two different pieces though,
7 isn't it? The exchange between the lawyer
8 and the client discussing the content of the
9 documents might be privileged?
10 A. Uh-huh.
11 Q. But would the documents themselves
12 that were being shown to the client become
13 privileged as a result of that exchange?
14 A. To answer that I'd have to --
15 MR. NEWBOLD: Objection to the form
16 of the question, because I think you're
17 leaving one necessary part out of the
18 hypothetical. That is, if the client has
19 agreed they would be produced or whether or
20 not no such agreement has been made between

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the client and the lawyer.

Q. (By Ms. Nial) Can a client refuse or direct a lawyer not to respond to a

legitimate discovery request?

A. I suppose he can.

Q. And if he does direct the lawyer not to respond to a legitimate discovery request, can the lawyer do that?

A. At that point, I think the lawyer needs to advise the client as to the nature of this request that is being made -- the nature of the direction from the client -- the consequences flowing from observance or nonobservance of the order. And then the client has to decide whether or not to respond.

Q. What if the client says, "I don't care what you're supposed to do. Don't do it." Can the lawyer follow that direction?

A. Well, the lawyer -- at that point, the lawyer has a duty, I think, to impress upon the client the probable consequence of that refusal.

Q. In your experience, what would be the possible consequences of not responding to a legitimate discovery request?

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A. Well, I think for one thing, you might trigger the Crime Fraud Exception to the privilege. There, the attorney would be assisting or aiding the client in perpetrating what I suppose you could call a fraud; although, I'm not sure it meets that standard. And the client is knowledgeable about what is being done.

Q. If a lawyer becomes a business partner with his client, are the communications between the lawyer and client within the context of that business partnership relationship privileged?

A. My response would be that where the lawyer's acting in a purely business capacity, no legal service is being rendered, and the discussions are purely about business matters of the company, that the privilege probably would not apply to those communications.

Q. Are you familiar with the term "Special Project"?

A. Yes. I am familiar with that.

Q. And what does that term "Special Project" mean to you in the context of tobacco litigation?

A. Well, from the readings on that review list, I learned that the Special

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6 Projects was a former funding from CTR.

7 Q. Are you familiar with the

8 circumstances that surrounded publication of

9 the results of Special Project research?

10 A. Would you help me with a more

11 specific question?

12 Q. To your knowledge, were Special

13 Project researchers allowed to publish?

14 A. To my knowledge, they were.

15 Q. And what do you base that knowledge

16 on?

17 A. From the readings that I've done.

18 Q. And do those readings include any

19 internal industry documents beyond those

20 documents which we have in our box that have

21 been produced to us?

22 A. No. Not to my knowledge.

23 Q. Are you familiar with a case in New

1 York, I believe, called Sackman versus --

2 (Plaintiff's Exhibit No. 9 was

3 marked for identification. A

4 copy is attached.)

5 MR. RANDLES: This is Magistrate

6 Boyle's opinion that was reversed and

7 vacated by Judge Spat, correct?

8 MS. NIAL: I believe that's correct.

9 But it's not relevant to what I want to ask

10 the witness about.

11 MR. RANDLES: I just want to be

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12 clear that we were talking about the same

13 thing.

14 MS. NIAL: Yeah. I believe it was

15 vacated and remanded because of the

16 intervenors.

17 MR. FERRIS: What did you say? I

18 didn't understand you.

19 MS. NIAL: I said this is the

20 Sackman opinion which was vacated and

21 remanded because of intervenors that came

22 in, and the trial judge wanted to have the

23 Special Master re-review it based on

1 intervenor arguments.

2 MR. FERRIS: Thank you.

3 MR. RANDLES: Actually, the

4 Magistrate -- Boyle is a Federal Magistrate.

5 MS. NIAL: That's true. But the

6 trial judge wanted to Magistrate to hear --

7 MR. RANDLES: Exactly. You said

8 Special Master.

9 MS. NIAL: Sorry. I apologize.

10 Q. (By Ms. Nial) Not to interrupt your

11 reading, but just to point out the section

12 that I'll want to talk about. And that's on

13 page 17 regarding Special Projects. But

14 please take your time.

15 (Deponent reviews document.)

16 Q. If I could just direct your

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17 attention. This is the only question I'll
18 ask on this document, unless there's a
19 follow-up, of course, to page 17.
20 And would you agree with me in the
21 paragraph that starts at the bottom of page
22 17 with "moreover" that that paragraph
23 discusses Special Projects?

1 A. Yes. It starts off that way.
2 Q. Now, this is an opinion written, is
3 it not, by Judge Boyle? He signed it at the
4 end?
5 A. That's correct.
6 Q. And on page 17, Judge Boyle says
7 moreover, Liggett asserts that any Special
8 Projects research scientist was free to
9 publish its findings and opinions without
10 restrictions. Now, is that consistent with
11 your understanding of Special Projects?
12 A. That's my understanding.
13 Q. And the Judge further says, It
14 would appear that this was encouraged, which
15 is fully consistent with the public
16 relations motivations behind Special
17 Projects. Are you aware of any public
18 relations motivation behind Special
19 Projects?
20 A. I'm aware from reading several of
21 the materials, including this, yes.
22 Q. Now, the next sentence of Judge

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Boyle says, "This is hardly the type of

agreement that one would find, however, where counsel engages in a scientific or medical expert for the purpose of testifying in litigation."

Do you agree with Judge Boyle that it's unusual to allow freedom to publish when counsel is engaging a scientific or medical expert for the purpose of testifying in litigation?

A. Well, I would agree that as the opinion goes on usually, that is, quote, tightly controlled, end quote.

Q. And usually, "The materials relied on by the expert and disclosure is customarily made during the last phase of discovery and then under counsel's control"?

A. Typically, yes.

Q. Would you agree that in order for the researcher to be doing a Special Project that could be protected by the attorney/client privilege that researcher would need to know the litigation purpose behind the work he was doing?

MR. NEWBOLD: (To the court

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2 reporter) Would you read the question back
3 for me, please?
4 (Court Reporter reads back.)
5 MR. NEWBOLD: Objection to the form
6 of the question. What do you mean by
7 "protected"?
8 MS. NIAL: Protected from disclosure
9 by the attorney/client privilege.
10 Q. (By Ms. Nial) Do you understand
11 what I mean by "protected by disclosure from
12 the attorney/client privilege"?
13 A. I think I do, but either read it
14 back one more time or else restate it.
15 Q. I'll try it again.
16 A. All right.
17 Q. In order for a Special Project
18 researcher to be doing Special Project
19 research that could be protected from
20 disclosure by the attorney/client privilege,
21 would that researcher have to know the
22 litigation purpose behind the research?
23 A. Well, first of all, I think the

1 attorney, in order to fill gaps in
2 scientific knowledge, has a duty to
3 recommend or to arrange for research which
4 would produce a product that might fill that
5 gap and would be useful in framing the case
6 for that lawyer's client.
7 Now, clearly, the lawyer has a duty

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8 to do that; and he is operating ethically
9 and properly when he secures research to
10 fill those gaps in knowledge. As to whether
11 the researcher has to be aware of the
12 litigation purpose, I don't know that that
13 is a key to the privilege.
14 Now, the researcher is performing
15 this as -- in a sense, he's providing this
16 information to the attorney to be used for
17 litigation purposes. The information
18 clearly would be protected by the privilege,
19 because it's generated for that purpose or
20 at least would be covered under the Work
21 Product Doctrine.
22 I don't know that knowledge on the
23 part of the researcher is an important

1 element in that mix.
2 Q. So if the researcher is not advised
3 that his work is for the purposes of
4 litigation and that it is protected by
5 either the attorney/client or work product
6 privilege from disclosure to persons other
7 than the attorney or his client, you still
8 feel that that material is protected even
9 though he is unaware of the purpose?
10 MR. NEWBOLD: Objection. Asked and
11 answered.
12 A. Well, first of all, I think that

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13 the attorney probably ought to inform, just
14 as a matter of insurance, that this material
15 will be subject to a privilege and should
16 not be disclosed. I still don't think that
17 the knowledge on the part of the researcher
18 is essential to the finding of the
19 privilege.
20 Q. Does the attorney or the client
21 rightfully have an expectation of
22 confidentiality if they do not inform the
23 researcher that this material is

1 confidential or protected because of the
2 attorney/client or work product privilege?
3 A. Let me understand the question.
4 You say does the attorney or the client --
5 Q. Or the client have an expectation
6 of confidentiality if the attorney does not
7 inform the researcher that the material that
8 he is generating is expected to be protected
9 from disclosure either by the
10 attorney/client or the work product
11 privilege?
12 MR. NEWBOLD: Objection. Calls for
13 speculation -- the use of the word
14 "expectation."
15 Q. (By Ms. Nial) Mr. Williams, you
16 understand what the expectation of
17 confidentiality means, do you not?
18 A. Yes, I think I do. But I think

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19 still -- I think the client and the attorney
20 do and should treat the material generated
21 as privileged. I think they should expect
22 that the privilege would apply to it.
23 Q. But if the person who is generating

1 the information -- the researcher -- has no
2 reason to know or understand that his
3 material should be protected from disclosure
4 because it will be subject or is subject to
5 the attorney/client or work product
6 privilege, how can there be an expectation
7 that that material would be kept
8 confidential?
9 A. Well, the privilege itself says
10 that the client has a right to refuse to
11 disclose or to prevent another person from
12 disclosing privileged information.
13 Q. But if one does not know that the
14 document is confidential, one is, in fact,
15 is one not, a third party outside of the
16 group that is dealing with confidential
17 information?
18 MR. NEWBOLD: Objection. Asked and
19 answered. Counsel's arguing with the
20 witness.
21 MS. NIAL: No, I'm not. I'm arguing
22 at all. I'm asking a very clear question.
23 MR. NEWBOLD: Which he's answered

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twice.

MS. NIAL: No.

Q. (By Ms. Nial) Is the researcher outside of the group that is sharing the confidential information if he is not brought into the group by some advice or information that the material that he's generating is confidential?

MR. NEWBOLD: Objection to the form. Asked and answered.

A. Well, I'm not sure you got to the question that last time. What is the question?

Q. Let's go back to the -- I'm trying to draw some analogy -- trying to understand how a third party -- I'll give you some background.

Trying to understand how a third party who is neither an employee of the lawyer nor an employee of the client -- is a third party researcher -- can be a member of a group that can protect a privilege if he is not notified of the privilege.

MR. NEWBOLD: I'm not too sure there's a question yet.

Q. (By Ms. Nial) Would you explain to

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4 me how he can be a member of that group?

5 A. Let me ask what assumption we're

6 starting with. Is this a researcher who has

7 been selected by a Scientific Advisory

8 Board.

9 Q. Well, are Special Project

10 researchers selected by the Scientific

11 Advisory Board?

12 A. Not to my knowledge. They engaged

13 in grants and contracts.

14 Q. Then who are the Special Project

15 researchers selected by?

16 A. Generally by attorneys.

17 Q. Is the selection by an attorney

18 enough to notify the researcher that the

19 work he is doing will be protected by the

20 attorney/client or work product privilege?

21 MR. NEWBOLD: Object to the form.

22 Are we talking about a Special Projects

23 now? Or about your hypothetical?

1 MS. NIAL: We are talking about a

2 Special Projects fund recipient.

3 A. All right. If the lawyer has

4 determined that there is a need for

5 scientific information in order to assist in

6 the development of his client's case and

7 decides that this individual can possibly

8 produce, through research or whatever,

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9 product that will enable the lawyer to
10 further the development of the client's
11 case, then the product produced by that
12 individual in response to the lawyer's
13 request should be covered by the privilege.
14 MR. NEWBOLD: Would this be a good
15 time to take a break, counsel?
16 MS. NIAL: I guess so.
17 (Recess taken.)
18 Q. (By Ms. Nial) Mr. Williams, you may
19 recall that we discussed a while ago, seems
20 like years, Plaintiff's Exhibit 2, which was
21 a list -- which was a transmittal letter and
22 a list of issues.
23 A. Yes.

1 Q. I wonder if we could go through
2 those issues and talk a little bit about
3 your opinion relating to those issues. Now,
4 the first paragraph of this issues list
5 provided to you by Mr. Newbold tries to
6 place the issues in context.
7 It says, "In the context of
8 continuous product liability litigation and
9 recurring legislative and administrative
10 proceedings, and when these proceedings
11 generate media attention, including comment
12 from adversaries, are product manufacturers
13 entitled to seek advice from lawyers about
14 how to conduct their affairs and how to

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15 communicate about those affairs in order to
16 protect their legal or litigation position?
17 Is it a breach of duty for lawyers to
18 provide those services?"
19 Does that paragraph, as provided by
20 Mr. Newbold, provide the context that you
21 were given by the tobacco industry lawyers
22 for the discussion of the next set of
23 issues?

1 A. Well, that is the context, yes, in
2 which legal services were sought by the
3 tobacco companies. So, yes.
4 Q. Is it important to your opinion
5 that the legal proceedings generate media
6 attention?
7 A. Well, I think it's important to the
8 client, because the client is entitled to
9 legal advice concerning the best way to
10 handle media attention.
11 This, apparently, is one of the
12 most publicized, continuing litigation
13 efforts in history, I suppose. And lawyers
14 can be helpful in rendering legal advice to
15 a client as to how to present positions to
16 the public.
17 Q. Is that legal advice or public
18 relations advice?
19 A. Well, the ultimate product is

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20 public relations. But the advice which the
21 lawyer gives to the client is legal advice.
22 Q. Is it legal advice because it's
23 being given by a lawyer?

1 A. It's legal advice because the
2 lawyer is informing the client of positions
3 and consequences flowing from various kinds
4 of publicity that might ensue.
5 Q. Would some of the legal advice that
6 might be provided in reference to this
7 general public relations goal advice
8 regarding admissions against interest?
9 A. Well, I would think in the context
10 of giving legal advice, the lawyer would
11 inform the client of all possibilities.
12 Q. Would a lawyer, in giving the legal
13 advice regarding this public relations, be
14 likely to advise a client not to lie?
15 A. I think a lawyer has a duty to
16 inform the client of his best legal advice,
17 of the options available, and of the
18 consequences attendant upon the client's
19 decision to follow one or more of the
20 options.
21 Q. If the lawyer offers the advice to
22 a client not to lie in his public relations
23 statement and the client chooses to ignore

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that advice and lies and the lawyer knows that the client lied, is there any action that the client -- that the lawyer must ethically take regarding that lie?

A. Well, the lawyer has given the client his or her best advice. And the client then makes a decision and acts, perhaps, independently of that advice. That's -- the lawyer has performed his or her duty.

Q. Let's turn from the public relations context of this legal advice and look, now, to a legal proceeding in which the lawyer is giving the client advice; and he tells the client not to lie.

The client ignores that legal advice and lies at the legal proceeding. Are there different actions that the lawyer must take in reference to that lie?

A. I need to know what form the lie takes.

Q. The client gets up on the stand and perjures himself in direct contradiction to

the advice that the lawyer has given him and the lawyer knows that the client has lied.

A. Well, the Standards of Professional Responsibility or the Code of Professional

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Responsibility impose on the lawyer the duty not to knowingly permit a witness or client -- client, I think is the term it uses -- to present false testimony.

I am assuming that under -- in the context of your question, the lawyer is surprised by the testimony. Is that a correct assumption?

Q. The lawyer assumed that the client would accept his advice and not lie. But the client lies on the stand. What should the lawyer do?

MR. NEWBOLD: Is part of your assumption that the lawyer is there when the, quote, lie is told by the client on the stand?

MS. NIAL: Yes.

Q. (By Ms. Nial) It is part of my assumption that the lawyer who provided the

advice to the client who is getting on the stand is, in fact, in the courtroom and hears his client lie. What should he do?

A. Well, the Code prohibits the knowing presentation of false testimony -- prohibits the lawyer from engaging or permitting a client to knowingly -- that is, knowing the lawyer -- to testify falsely.

If it is a surprise to the lawyer; and it's blurted out before the lawyer has a

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11 chance to -- if he is questioning the
12 witness, to stop it. Or in other words --
13 in any other way to interject himself into
14 the process.
15 Then the lie has been testified
16 to. And I know what I would do. I would
17 talk to the client in a recess, and I would
18 inform the client that he had to clarify
19 that truthfully or our relationship was
20 terminated.
21 Q. That's what you would do?
22 A. That's what I would do, personally.
23 Q. Would that be the advice you would

1 give to any lawyer in the circumstance that
2 I have just described and we've just talked
3 about?
4 A. Well, it might be. But I don't
5 know that the lawyer would be under a duty
6 to take the same action that I suggest that
7 I would do personally.
8 Q. Are there a range of options open
9 to a lawyer in that circumstance? He's in
10 the courtroom. The client lies.
11 MR. NEWBOLD: Wait. Object to the
12 form. I don't believe that there's a
13 question imbedded in your last statement.
14 MS. NIAL: Yes, there is. I said,
15 "Does the lawyer have a number of options

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16 in the circumstance that we've just
17 discussed? The lawyer is in the courtroom.
18 The client lies." Is there a question in
19 there, Mr. Newbold? Yes.
20 Q. (By Ms. Nial) I wonder if you can
21 answer the question, Mr. Williams.
22 A. Well, the options, I think, would
23 include the one I suggested. But also would

1 include ignoring it, for example. That
2 would be an option that the lawyer could
3 follow.
4 And as a middle ground, I suppose
5 an option would be to inform the court
6 and/or opposing counsel.
7 Q. Now, the option that you described
8 as ignoring it, is taking that option
9 consistent with the lawyer's duty of candor
10 to the tribunal?
11 A. It is not.
12 Q. Would it be a breach of his ethical
13 duty of candor to the tribunal to take such
14 an option as ignoring the lie?
15 A. The Code speaks to an event yet to
16 come; that is, the knowing permitting of a
17 client to testify untruthfully. It doesn't
18 specifically address the situation where the
19 testimony comes as a surprise.
20 So I would -- I think my response
21 would be that for the lawyer in that

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22 situation, if he chose to ignore that, it
23 would be very unwise. But I'm not sure it

1 would be a breach of the Code.
2 Q. So a lawyer, in your opinion, can
3 allow a lie to remain before the court
4 without doing anything about it? And that
5 is an ethical choice?
6 A. I think that the middle option that
7 I suggested, disclosure to the other side
8 and the court, is what should be done.
9 Q. Now, if we could move to section 2,
10 always keeping in mind that paragraph 1 is
11 the context in which you were asked these
12 questions. It says, "In the
13 above-referenced context, does it violate
14 any duty for a lawyer to provide the
15 following services"?
16 "A. Advise about, prepare for, and
17 conduct litigation and trials?" Have any
18 problem with that?
19 A. No. I have no problem with that.
20 It does not violate any duty.
21 Q. "Advise about, prepare for, and
22 assist with the presentation of client
23 positions at legislative and administrative

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hearings?"

A. Again, my answer is it doesn't -- that's part of the lawyer's function. It does not violate a duty.

Q. "Identify, select, recommend, develop, arrange to fund, monitor, prepare, comment on writings of, and/or conclude relationships with experts or potential experts?"

A. Again, that's the lawyer's function in preparing to represent the client, be it litigation or regulatory hearing. And he should do those things. And it certainly doesn't violate any duty to do that.

Q. Does it violate any ethical duty for a lawyer to require that a researcher who is obtaining research funds from an alleged independent research funding organization to change the results reported in his proposed publication?

MR. NEWBOLD: Object to the form of the question.

A. This is research that's been, for

example, SAB funded?

Q. (By Ms. Nial) For example.

A. And the lawyer is commenting upon the product that is the report of the researcher?

Q. Going beyond commenting upon. He's

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7 requiring that changes be made in the
8 report, which is to be published -- changes
9 that would, in fact, make the results of the
10 research that are reported in the published
11 article false.
12 MR. NEWBOLD: Object to the form of
13 the question.
14 A. Let me answer it this way. The
15 lawyer can comment and require all he wants
16 to. But if the researcher rejects those
17 comments, ignores those requirements, and is
18 otherwise free to publish, then it doesn't
19 matter what the lawyer said.
20 Q. What if the lawyer has the power to
21 fund or not fund the researcher; and he will
22 make the decision whether or not to exercise
23 that power in favor of funding the

1 researcher based on whether or not the
2 researcher exceeds the requirement to change
3 the language in which the results are
4 recommended?
5 MR. NEWBOLD: I object to the form
6 of the question. I object to all this line
7 of questioning unless you specify as to
8 whether this is a CTR, whether it's an SAB
9 or whether it's a Special Project or what
10 type of research we're talking about.
11 MS. NIAL: You can object all you

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12 like. I'm asking the question of the
13 witness.
14 A. For my assistance in answering the
15 question, am I to assume that this is an SAB
16 funded research project?
17 Q. It is a grant. The same grant that
18 we started this question with.
19 A. And my answer would be the same.
20 So long as the researcher is free to accept
21 or reject and is free to publish, then the
22 lawyer's comments, directions, amount to
23 nothing.

1 Q. We're looking at "D. Suggest areas
2 of scientific research that might be useful
3 in supporting client legal or litigation
4 positions." Is that a breach of any duty
5 for a lawyer to provide those services?
6 A. Absolutely not. It's the lawyer's
7 responsibility to evaluate the evidence, to
8 identify any omissions or gaps in scientific
9 knowledge that would be useful in developing
10 his client's case, and then to provide the
11 advice that is contained in item D; that is,
12 suggest areas of research that would be
13 helpful.
14 Q. What's the difference between a
15 legal and a litigation position?
16 A. Well, I suppose the litigation
17 position would relate specifically to an

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18 ongoing case or impending case. A legal
19 position would be the client's position.
20 These would be some agency or something of
21 that sort.
22 Q. If a lawyer becomes involved in the
23 design of a research project, is the

1 lawyer's involvement in that design of a
2 research project information that should be
3 publicly expressed when the results of the
4 research project are published?
5 A. Well, we agree that the lawyer
6 should, in the exercise of his
7 representation of the client, identify these
8 areas -- designate that.
9 Q. You and I don't agree. But I
10 understand that that's your position.
11 A. All right. I see no reason
12 whatsoever for the lawyer to be -- for any
13 attribution to be made to the lawyer. This
14 is the product of the researcher.
15 The researcher is free to develop
16 his research and to prepare his report as he
17 chooses or she chooses. In so long as that
18 freedom exists then, of course, the lawyer
19 is entitled to no attribution.
20 Q. You have said, "So long as that
21 freedom exists then the lawyer is not
22 entitled." I said, "Should the lawyer's

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involvement be disclosed." A little bit

different, but I won't quarrel with you on that.

If, in fact, the freedom to publish is not allowed, does that make a difference to the lawyer's involvement in the design of the research project?

MR. NEWBOLD: Objection to the form of the question unless you specify what type of research project you're talking about.

MS. NIAL: I'm talking about the same grant.

A. Are you assuming that this is a grant made by the Scientific Advisory Board.

Q. Yes.

A. Well, first of all, it is my understanding that in all of those grants there was absolute freedom on the part of the researcher to publish and to produce results that were in accord with the researcher's findings and the various tests. So are you asking me to ignore that and to assume a situation in which that existed?

Q. Assume a situation in which that freedom to publish was not granted.

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3 A. Well, based on that assumption, I
4 still don't think that the lawyer's entitled
5 to any attribution on the publication.
6 Q. Do you have any opinion as to
7 whether or not this design of a research
8 project can dictate or at least affect the
9 outcome of that research project?
10 A. I'm not sufficiently knowledgeable
11 about scientific research. I've never
12 prepared a proposal. And I guess my answer
13 would be I don't know.
14 Q. So you're not an ethic -- I'm
15 sorry. Strike that. So you're not an expert
16 in scientific research ethics?
17 A. No, I am not.
18 Q. You have no familiarity with
19 scientific research or how the funding of
20 scientific research is done?
21 A. I know how the funding was done in
22 the case of SAB grants and contracts. But
23 as to a general knowledge in the field, I

1 certainly am no expert on that.
2 Q. And on what do you base your
3 knowledge of how the SAB funding was done?
4 A. From the various readings on the
5 materials on that review list.
6 Q. And the materials that you have
7 read on the review list do not include any

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8 internal documents provided to you by the
9 defendants; is that correct?
10 A. No, it did not.
11 Q. Would it make a difference to your
12 opinion if you had such internal documents?
13 A. Well, first of all, I'd have to see
14 the document and read it before I could
15 answer that question.
16 Q. So the provision of such documents
17 could make a difference to your opinion
18 depending on what they said?
19 A. Well, I'm not in a position to
20 answer that until I can read and evaluate
21 the document.
22 Q. Would you like to see such
23 documents?

1 MR. NEWBOLD: I'm sure he'll answer
2 any questions that you might have. It's up
3 to you whether you want to show him
4 confidential and privileged documents.
5 MS. NIAL: Excuse me. This is the
6 CTR. I don't believe they have any
7 confidential privileged documents. But at
8 this point, I don't think your objection is
9 well-taken. But I would like the witness to
10 answer my question.
11 Q. (By Ms. Nial) If such documents
12 were available to you from the defendants,
13 would you be interested in reviewing them?

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14 Documents relating to the funding mechanisms
15 within the CTR, whether they were grant,
16 contract, or Special Projects.
17 A. Well, I think I understand how
18 those functions operated. If defendants
19 chose to make available documents which
20 would be helpful in arriving at a conclusion
21 or opinion, I'm not going to say, "No.
22 Don't show them to me."
23 Q. But would you, as someone who is

1 developing an opinion that the conduct of
2 tobacco industry lawyers with regard to that
3 research was ethical, wish to have those
4 documents on which to base your opinion?
5 A. I think that I had enough material
6 and enough description of the function to
7 enable me to reach an opinion.
8 Q. When you were reaching your
9 opinion, did you consider the contents of
10 plaintiff's filings as well as defendant's
11 filings?
12 A. I believe I read the third amended
13 complaint in the Florida case. But I did
14 not read the complaint in the Mississippi
15 case.
16 Q. It was provided to you, but let me
17 ask you the question. Did you review, for
18 example, any of the plaintiff's filings

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19 regarding the Crime Fraud Exception in the
20 Florida case?
21 A. Are you referring to the transcript
22 of that hearing?
23 Q. I believe there were filings --

1 several filings made that were listed on
2 your list. Let's pull the list out and make
3 sure. It might have been the Butler case.
4 MR. NEWBOLD: Do you have a copy of
5 that list? Where are the exhibits?
6 MS. NIAL: Right here in front of
7 me.
8 Q. Plaintiff's memorandum in support
9 to compel documents listed in plaintiff's
10 first designation. And then plaintiff's
11 supplemental in Butler regarding CTR. You
12 reviewed those particular submissions? 36
13 through -- Oh, I guess, 36 through 42?
14 A. Yes. At one time or another, I did
15 review those.
16 Q. And what impact did those
17 submissions, if any, have on your opinion
18 regarding the conduct of tobacco industry
19 lawyers?
20 A. To be specific, which documents are
21 you referring to?
22 Q. The filings made by the plaintiffs
23 in those cases regarding the Crime Fraud

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1 Exception and their motions to compel
2 certain documents.
3 A. Well, I thought that the pleadings
4 were well put together -- well-drafted. I
5 did not feel that they were persuasive in
6 causing me to change my opinion.
7 Q. Have you made a systematic review
8 or a systematic study of the conduct of
9 tobacco industry lawyers over the past 40
10 years?
11 A. Well, I have reviewed the materials
12 that have been provided to me. And as to a
13 systematic study over a period of 40 years,
14 the answer would be no. But much of that
15 material does contain historical background.
16 Q. Were you offered access to any
17 documents beyond what has been produced
18 here?
19 A. No.
20 Q. Have you asked for any access
21 beyond what's been produced here?
22 A. No.
23 Q. I'd like to ask you to look at your

1 26 (b) statement, which I believe we made
2 Exhibit 6 and ask you to look at the third
3 paragraph from the top.

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4 And it says, "In particular,
5 Professor Williams, is expected to opine
6 that in the context of continuous product
7 liability litigation and recurring
8 legislative and administrative proceedings,
9 and when these legal proceedings generate
10 media attention, including comment from
11 adversaries, that product manufacturers,
12 including cigarette manufacturers, are
13 entitled to seek advice from lawyers about
14 how to conduct their affairs and how to
15 communicate about these affairs in order to
16 protect their legal or litigation
17 positions."
18 "And that it is not a breach of
19 any duty for lawyers to provide those
20 services." Is that your opinion?
21 A. Yes. It is not a breach of duty to
22 provide those services.
23 Q. And is that the opinion you intend

1 to testify to when called to the stand in
2 the Moore case?
3 A. Yes, it is.
4 Q. And that is an opinion based on
5 only the documents that are listed on the
6 list that we have in our possession at this
7 time?
8 A. That is correct. And also on my
9 experience over time -- some 30 odd years of

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teaching with emphasis from time to time on legal ethics in certain courses.

On other readings of a general background nature. On my familiarity with the Code of Professional Responsibility and with the Rules of Evidence.

Q. But none of those readings relating to the Rules of Professional Responsibility, etc. that I believe are discussed in the last paragraph on this Rule 26 (b) statement provide you with any factual information regarding the conduct of tobacco industry lawyers; is that correct?

A. That's correct.

Q. Do you have a list there of the documents?

A. I do not.

Q. Let's try to share here. Documents 2 through 8 are affidavits or declarations of witnesses that have either testified, have been listed to testify, or have provided affidavits for the defendants -- the tobacco defendants in either the Butler case, the Moore case, or the Childs case; is that correct?

A. Let I see that.

Q. I can show you those, if you'd like. I'm sorry. And the Sackman case.

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15 Now, as you've reviewed --

16 A. Excuse me. She was going to show

17 me those documents.

18 Q. Oh, sure.

19 A. Items 2 through 8.

20 (Hands documents.)

21 (Deponent reviews documents.)

22 Q. Have you had an opportunity to look

23 at these documents?

1 A. Yes. Thank you.

2 Q. I wonder if I could ask you now

3 that you've had an opportunity to refresh

4 your memory. On what, in the Wildes

5 document -- in the Wildes affidavit do you

6 intend to rely on giving your testimony

7 either today or at trial?

8 A. Well, the Wildes document is a

9 useful summary or survey of general ethical

10 principles. And I would certainly want to

11 refresh myself about those and draw upon

12 them in developing an opinion or testimony.

13 Q. When you say that this affidavit is

14 a good refresher on general ethical

15 principles, did you note while reading

16 Dr. Wildes' affidavit that ethics can only

17 be descriptive and not normative?

18 A. I did see that there, yes.

19 Q. Are you familiar with that

20 distinction?

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21 A. I'm not sure I quite understand

22 what he means.

23 Q. If I told you, and if you would

1 assume for a moment, that it is his position

2 that secular ethics cannot be normative;

3 that is, they cannot establish a standard of

4 conduct. They can only describe ethical

5 dilemmas. Is that your position as to what

6 ethical ethics can do?

7 MR. NEWBOLD: I object. That is not

8 Kevin Wildes' position.

9 MS. NIAL: It certainly is what he

10 testified to.

11 MR. RANDLES: It's not what he

12 testified to. I was there as well.

13 Q. (By Ms. Nial) Is that your view of

14 ethics?

15 A. Well, you're asking me to assume,

16 first of all, that is Dr. Wildes' position.

17 Q. Uh-huh.

18 A. Regardless of whether it is, you're

19 asking me to assume that?

20 Q. For the purposes and based on the

21 objections coming from the other side of the

22 table. However, assume that that is his

23 position.

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A. Well, I do think that there are norms -- norms in any area of ethical conduct and standards that we live by, whether it be professional ethics or general ethics. I think there are norms designating what is good, what is bad, what is right, what is wrong.

Q. Dr. Sterling's affidavit or declaration of Dr. Sterling. Is there any particular piece of information that you found particularly helpful in forming you your opinion in Dr. Sterling's affidavit?

A. As I recall, he commented upon his freedom to publish, his freedom to develop the research without direction, if I am identifying the correct one.

Q. Is it possible that Dr. Sterling didn't know that his work was being manipulated?

MR. NEWBOLD: Objection to the form of the question.

A. I can't answer that.

Q. (By Ms. Nial) Would it make a

difference to you, in your opinion, if his work was being manipulated without his knowledge?

A. Well, I don't know what you mean by "manipulated."

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6 Q. Oh, directed. Changed. Misused in
7 any way without his knowledge.
8 MR. NEWBOLD: Objection to the form
9 of the question. It's compound.
10 Q. (By Ms. Nial) If it was changed
11 without his knowledge, would that make a
12 difference to you?
13 A. Are you asking me to assume that
14 his report of his research was changed by
15 some person without the consent of the
16 researcher?
17 Q. That's correct.
18 A. And then was published with those
19 changes without the consent of the
20 researcher?
21 Q. Yes. Would that make a difference
22 to you?
23 A. Now I'm lost. A difference as to

1 what?
2 Q. As to your opinion as to the
3 conduct of the tobacco industry and its
4 lawyers in relation to CTR research.
5 MR. NEWBOLD: Objection to the form
6 of the question.
7 A. Well, if I were informed of that
8 and I accepted that, then, of course, it
9 would go into the mix of forming the
10 conclusions that I did about CTR research.

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11 Q. But you weren't -- sorry. I didn't
12 mean to interrupt you.
13 A. All I have to go by is what is in
14 those affidavits. And they clearly indicate
15 that the manipulation, as you phrase it, was
16 not in place.
17 Q. But you've not seen any documents
18 except -- relating to CTR funding except
19 these affidavits and the materials provided
20 to you by the tobacco industry lawyers; is
21 that correct?
22 MR. NEWBOLD: Objection. Asked and
23 answered.

1 A. Well, as I said before, I have
2 reviewed these materials including those
3 affidavits and have not seen documents
4 outside the materials furnished me.
5 Q. When you reviewed Dr. Gutstein's
6 affidavit and Dr. Furst's affidavit, did you
7 notice that those affidavits were very
8 similar in paragraph 10?
9 A. May I see the two again?
10 Q. Sure. (Handing document) This is
11 Dr. Furst's affidavit. You can see his
12 signature.
13 (Deponent reviews documents.)
14 A. Well, certainly the simple thrust
15 is similar.
16 Q. Is the language the same?

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17 A. The language is somewhat different.
18 Furst is, I believe, a little bit longer.
19 They're essentially the same. There's some
20 difference in language.
21 Q. When these affidavit's were shared
22 with you by tobacco industry lawyers, did
23 they tell you who drafted the affidavits?

1 A. They did not.
2 Q. Did the tobacco industry lawyers
3 provide you with any information verbally
4 regarding Dr. Homburger?
5 A. My recollection is that
6 Dr. Homburger's name came up when we were --
7 or when I was looking at the excerpts in
8 Chapters 7 and 8 of "The Cigarette Papers."
9 I think I'm correct on that. I'm not
10 absolutely certain.
11 Q. We're not going to have time to
12 discuss with you "The Cigarette Papers" this
13 afternoon. So we'll move on to try to
14 discuss what we did have.
15 I noticed in the box that we
16 received regarding the contained documents
17 that were related to your testimony an order
18 form for the Brown & Williamson documents on
19 CD-ROM. Do you recall that document?
20 A. Yes, I do.
21 Q. Why were you provided with that

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22 form?

23 A. I don't know. It was with the

1 documents. I frankly did not act on it,

2 because I just didn't want to sit down and

3 go through a CD full of documents. But

4 beyond that, I don't know.

5 Q. You didn't have any curiosity about

6 what those documents might say?

7 A. Well, I had seen excerpts from them

8 and in the chapters in "The Cigarette

9 Papers." And I frankly did not have time. I

10 was told that they're fairly voluminous, and

11 I did not have time to sit down and go

12 through the CD. So I did not order it.

13 Q. Do you think that before the trial

14 you might have time to review the Brown &

15 Williamson documents?

16 A. I may have time to do that. And if

17 I feel it would be useful in developing

18 testimony, then I will likely do that.

19 Q. Would you be likely to purchase

20 your own CD-ROM?

21 A. Well, I think a CD-ROM is $250, as

22 I recall.

23 Q. Yes.

1 A. And that might have been a

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2 restraint on my ordering it initially. But
3 I probably would, if I chose to do that.
4 Q. I'm sure Mr. Newbold might pay for
5 that. Document 17. Do you recall this
6 document?
7 MR. NEWBOLD: Is this an exhibit?
8 MS. NIAL: We can make it an
9 exhibit.
10 MS. NIAL: This is the document that
11 you provided to Mr. Williams, document 17, a
12 statement concerning the origin and purpose
13 of the Tobacco Industry Research Committee
14 and its proposed functions.
15 Q. Do you recall that document,
16 Mr. Williams?
17 MR. NEWBOLD: If we're going to mark
18 this, I would like to note that there's some
19 highlighting on it. And I would suspect that
20 if you use it at trial, you will get a-- you
21 will use a document that's not highlighted.
22 MS. NIAL: We'll provide a clean
23 copy of the document.

1 MS. BURLEY: I would be happy to
2 make a copy now, if you'd like.
3 MS. NIAL: Well, let me ask the
4 question. So you might want to -- well, you
5 can identify that as an exhibit right now.
6 (Plaintiff's Exhibit No. 10 was

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marked for identification. A copy is attached.)

A. May I take a moment?

Q. Of course.

(Deponent reviews document.)

Q. Mr. Wildes, excluding the highlights, which I did --

MR. NEWBOLD: This is Mr. Williams.

Q. Sorry. Mr. Williams. Excluding the highlighting which I put on this document, have you seen this document before?

A. I have.

Q. And this was provided to you by the tobacco industry lawyers?

A. Correct.

Q. (Indicating) I wonder if you could read -- or not out loud, but if you could

look at this section of the document for me.

It says, "The responsible chief officers of the nine cigarette and tobacco products manufacturing companies in America and five organizations of growers of leaf tobacco and tobacco warehouse associations have formed the Tobacco Industry Research Committee in the interest of the public as well as of the industry to meet the challenge raised by widely publicized reports in the press, purporting to link tobacco smoking with the cause of lung

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cancer." Did I read that correctly?

A. You did.

Q. Is that your understanding of the reason the Tobacco Industry Research Committee was founded?

A. Yes. My understanding of the reason is based on this document and some of the other readings that I have had occasion to review.

Q. Now, you have reviewed "The Frank Statement of Cigarette Smokers"?

A. Yes.

Q. I'm sorry. "To Cigarette Smokers," which we'll make Exhibit 11.

(Plaintiff's Exhibit No. 11 was marked for identification. A copy is attached.)

Q. If you'd take a minute to review that Frank Statement, I'd like to ask you a couple of questions about these two documents?

A. Very good.

(Deponent reviews documents.)

Q. Now, I wonder if you could point out to me on the Frank Statement where it is disclosed to the public -- and perhaps it's here. I'd like you to show it to me.

Where it is disclosed to the public

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18 that the Tobacco Industry Research Committee
19 is being established in the interest of the
20 industry.
21 It says in the interest of the
22 public and in the interest of the industry.
23 Does the interest of the industry come up in

1 the frank statement at all?
2 MR. NEWBOLD: Object to the form of
3 the question.
4 A. I don't see language to that
5 effect.
6 Q. Now, just to make sure on the
7 record, this isn't the first time you've
8 seen this document. So I'm not surprising
9 you with it. I wonder if you could read
10 this section. I'll read it and then maybe
11 you can comment on it.
12 "In the light of the foregoing
13 agitation and in the absence of
14 authoritative findings, there is a
15 responsibility on the part of the management
16 of the tobacco manufacturers and others
17 engaged in the tobacco industry to aid in
18 the final determination of this controversy.
19 It is the earnest wish of the
20 industry to encourage competent scientific
21 authority to find ultimate facts which will
22 dispel the present confusion and to
23 communicate authoritative factual

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information on the subject to the public."

Now, keeping that statement in mind, do you see who has signed, if you will, in type letters, this statement?

A. Yes.

Q. Pall M. Hahn. Are you familiar with Mr. Hahn?

A. No. I'm not familiar.

Q. Do you know that he was a president of one of the major tobacco companies at the time?

A. I think that document refers to him as president of the --

Q. Chairman.

A. Chairman.

Q. Now, the passage that we have just read, which is contained on page 3 of this exhibit, does that passage indicate that there is a responsibility on the part of the management of the tobacco manufacturers and others engaged in the tobacco industry to aid in the final determination of this controversy?

MR. NEWBOLD: Objection. The document speaks for itself. Otherwise, it's

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speculation.

Q. (By Ms. Nial) Is that what the document says?

MR. NEWBOLD: Is your question is that what the document says?

A. That is what the document says.

MS. NIAL: Is that what the document says? I know you say you're slow, but you're not that slow.

Q. (By Ms. Nial) That is what the document says?

A. Yes.

Q. I'm going to ask you your opinion. Is this the kind of acceptance of responsibility that would trigger a duty on the part of the tobacco industry to do exactly what it says in this document?

"To aid in the final determination of this controversy and to communicate authoritative factual information on the subject to the public"?

MR. NEWBOLD: Object to the form of the question. Definition of "duty." Go ahead, Parham.

A. My answer would be no.

Q. (By Ms. Nial) Is there any statement or language that you could draft that would, in fact, place upon the tobacco manufacturers a duty to disclose information

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regarding the hazards of cigarette smoking?

A. You mean in a statement of this sort?

Q. Yes. In a public statement.

A. I don't think that whatever I would draft would have any significance in creating a duty.

Q. So no matter what they said in the public forum, they could place upon themselves no greater duty than already existed?

A. In the public forum, are you referring to the Frank Statement?

Q. A similar statement.

A. A similar statement. My result --

my response is that that does not create a duty on the part of the tobacco companies.

Q. What if they made that statement in an effort to -- strike that. What if they made that statement with the hope that the public would rely on that statement and not regulate the tobacco industry?

MR. NEWBOLD: Objection to the form of the question. Calls for speculation.

A. That is speculation and opinion. I guess my answer would be I don't know the answer to that one.

Q. (By Ms. Nial) This is a document

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Source: https://www.industrydocuments.ucsf.edu/docs/gsfl0001

14 which was included in Plaintiff's Response
15 to Defendant's Joint Submission regarding
16 CTR and CTR Special Projects. That document
17 was included on the list of the documents
18 that you reviewed. If we could identify
19 this as an exhibit and if you'd like to take
20 a moment to look at it.
21 (Plaintiff's Exhibit No. 12 was
22 marked for identification. A
23 copy is attached.)

1 (Deponent reviews document.)
2 Q. Now, do you recognize this document
3 as one of the documents you've reviewed?
4 A. Yes, I do.
5 Q. Now, on page 2 of the document
6 under Roman Numeral III, The Industry's
7 Position, the last two paragraphs, "They
8 feel that they should sponsor a public
9 relations campaign, which is positive in
10 nature and is entirely pro-cigarettes.
11 They are confident that they can
12 supply us with comprehensive and
13 authoritative scientific material which
14 completely refutes the health charges.
15 They are also emphatic in saying
16 that the entire activity is a long-term,
17 continuing program, since they feel that the
18 problem is one of promoting cigarettes and
19 protecting them from these and other attacks

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20 that may be expected in the future.

21 Each of the company presidents

22 attending emphasized the fact that they

23 consider the program to be a long-term one."

1 Now, you've reviewed the Frank

2 Statement once in the last five or so

3 minutes. Did you find any language in the

4 Frank Statement that indicated that the CTR

5 would be pro-cigarettes?

6 A. No. I don't think it says that.

7 Q. Did you see any language in the

8 Frank Statement that said it would promote

9 cigarettes and protect them from attacks?

10 A. No.

11 MS. NIAL: Give us five minutes. We

12 can see if we can narrow down what we have

13 for today.

14 (Recess taken.)

15 Q. (By Ms. Nial) Based on what we had

16 available to us that you had reviewed for

17 today, we have just a couple of more

18 questions -- some cleanup stuff. Have you

19 ever invested directly or indirectly in a

20 tobacco company?

21 A. I've not invested directly. I do

22 own mutual funds, which probably have

23 investments in the tobacco companies. I

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would have to look at the prospectus or the annual report to determine the answer to that.

Q. Do any of your sons or your daughter work for a tobacco company?

A. No.

Q. Have you ever attended a seminar held by any of the tobacco industry defendants regarding the medical issues involved in tobacco litigation?

A. I have not.

Q. Have you been invited to such a seminar?

A. I have not.

Q. Have you gone to the law firm of Covington & Burling to discuss tobacco or tobacco litigation?

A. I have not.

Q. Has Mr. Randles offered you access to Shook, Hardy & Bacon's 4th floor library on tobacco litigation?

A. He has not.

Q. You think you might want to ask him

about it?

A. We will discuss it.

Q. When you were reviewing Mr. Trotter's deposition, did you have any

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5 particular problems with any of the opinions
6 that he gave?
7 A. Well, could you be specific and
8 point me to an opinion?
9 Q. Well, I wouldn't know what opinions
10 you might have objected to. Why don't we
11 get out his 26 (b) statement and start from
12 there? Is this 26 (b) statement of Cham
13 Trotter's familiar to you?
14 A. Yes, it is.
15 Q. In the first part of this 26 (b) or
16 expert disclosure statement, it says,
17 "Mr. Trotter is expected to testify
18 concerning the tobacco industry's practice
19 of involving lawyers in scientific meetings
20 and editing scientific reports and other
21 documents.
22 And in selecting scientific
23 research projects and of sending scientific

1 reports and other documents regarding
2 scientific research through their legal
3 departments."
4 Then it says, "Specifically,
5 Mr. Trotter is expected to testify that the
6 foregoing practice was an attempt to
7 wrongfully create a privilege for various
8 reports and other documents that the
9 industry wished to conceal from plaintiff's

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10 counsel and others in order to claim that
11 the reports and other documents were
12 protected against disclosure by the
13 attorney/client privilege or Work Product
14 Doctrine."
15 Did I read that correctly,
16 Mr. Williams?
17 A. Yes.
18 Q. Do you disagree with Mr. Trotter's
19 conclusions as expressed in that paragraph?
20 A. Well, based on the materials that
21 I've reviewed and the other materials, the
22 Code and other matters that I have testified
23 earlier that I utilized and relied on in

1 forming opinions, I reached the conclusion
2 that what the lawyers were doing, as
3 evidenced through these materials, was
4 legitimate lawyer work. And that there was
5 no violation of any ethical standard.
6 Q. When you reviewed Mr. Trotter's
7 deposition, did you note that Mr. Bernick
8 discussed with him several volumes of
9 documents that he reviewed in order to come
10 to his collusions regarding the conduct of
11 the tobacco lawyers?
12 A. I remember a reference to that, but
13 I would need to see the deposition in order
14 to be certain.
15 Q. We'll find that citation in a

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16 moment. I presume as those notebooks are
17 not on the list, you have not had an
18 opportunity to review those notebooks that
19 Cham Trotter reviewed?
20 A. I don't recall independently what
21 it says. I would like to see that before I
22 answer the question.
23 Q. That's Cham Trotter's deposition,

1 Volume 1. And I believe it's in the
2 right -- lower right hand corner. I think
3 that's page 6.
4 A. Five, six, seven eight. Is it down
5 here?
6 Q. I think it's right here and the
7 bottom of that small page.
8 A. Page 7 is what I'm reading.
9 Q. Bottom of page 6, I think, all the
10 way up to page 7?
11 (Deponent reviews document.)
12 Q. Do you agree that the deposition
13 says that he has two volumes of documents
14 which he reviewed in preparation for this?
15 A. That's what it says.
16 Q. And you have not seen those
17 documents -- those two volumes?
18 A. Well, it says, "Selected readings
19 from the Butler case." And then in the
20 upper right part of the transcript, it says

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that there's some 32 documents in those volumes. Frankly, I'd have to see that in order to know if I've seen them elsewhere.

Q. But no one has provided to you two volumes that says, "This is what Cham Trotter reviewed"?

A. I have not seen anything as being identified as selected reading from the Butler case.

Q. When you reviewed the Trotter deposition, did you -- after you reviewed it, excuse me, the Trotter deposition, did you discuss it at your meetings?

A. In one of the meetings, we did review the deposition -- at least selected parts of it.

Q. Do you recall which selected parts were pointed out to you by --

A. My recollection is most of the areas that we looked at were in Volume 2 of the deposition.

MR. NEWBOLD: Counsel, my watch now indicates that we've now been going for six hours of testimony.

MS. NIAL: In that case, based on the agreement, we'll stop today and simply

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inform you that, as we said earlier, and with even more force, we say now we haven't had an opportunity to review Chapters 7 and 8 to formulate questions for Mr. Williams.

And we will intend to do that and notify you subsequently of a date on which we intend to continue this deposition. I understand you object to that, but I want to make that clear.

MR. NEWBOLD: For the record, I want it to be clear that we told you that we would make Mr. Williams available on the 31st and 1st. You selected not to use the first day of the two days allotted to you. That your objection about the late production of documents is in that you had not sent a notice of the deposition to us.

MS. NIAL: But you do agree that he was going to rely on Chapters 7 and 8 and we weren't aware of that until this morning?

MR. NEWBOLD: I agree, yes. As I told you, I had inadvertently not included that in the paper. But I'd also like to

state for the record the book, "The Cigarette Papers," has been sitting on the floor behind you since 1:30 this afternoon.

And in the last three hours, you have not once reached for that book, much

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6 less used it in your cross-examination.

7 MS. NIAL: But I will put it on the

8 record that I could hardly be expected to

9 review Chapters 7 and 8 and ask questions at

10 the same time, based on the documents that

11 you have produced.

12 MR. NEWBOLD: And I would also

13 suggest that, I'm sure as it is no great

14 surprise to you, that you could have looked

15 over a copy of that book this morning and

16 over the lunch break.

17 MS. NIAL: Actually, Mr. Newbold, it

18 was my understanding that he hadn't reviewed

19 it. And I was going to ask him about it.

20 So be that as it may, you'll receive another

21 notice. And you'll do with it what you

22 will.

23 MR. NEWBOLD: As far as I'm

1 concerned, this deposition is over.

2 MS. NIAL: And I want it to be on

3 the record, of course, that this will be

4 continued on a later date based on the late

5 production of documents.

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1 C E R T I F I C A T E

2 STATE OF ALABAMA)

3 COUNTY OF JEFFERSON)

4 I, Tonya Bynum, Shorthand Reporter of

5 the State of Alabama, do hereby certify

6 there came before me the aforenamed

7 deponent, who was by me duly sworn to

8 testify to the truth concerning the matters

9 in this cause.

10 I further certify that I am neither

11 attorney or counsel for, nor related to or

12 employed by any of the parties to the action

13 in which this deposition is taken; and

14 furthermore, that I am not a relative or

15 employee of any attorney or counsel employed

16 by the parties hereto, or financially

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17 interested in the action.

18 IN WITNESS WHEREOF, I have set my

19 hand and seal this ____ day of _____,

20 1997.

21

22 Tonya Bynum
Notary Public

23 My Commission Expires: August 14, 2000

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